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International cooperation in combating transnational crime

Effective measures to prevent and control computer-related crime

Report of the Secretary-General

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I. Introduction

1. At its resumed tenth session, held on 6 and 7 September 2001, the Commission on Crime Prevention and Criminal Justice adopted a plan of action[1] dealing with the prevention and control of high-technology and computer-related crime as follow-up to and in implementation of paragraph 18 of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.[2]

2. In its resolution 56/121 of 19 December 2001, the General Assembly, expressing concern that technological advances had created new possibilities for criminal activity, in particular the criminal misuse of information technologies, recognizing the need to facilitate the transfer of information technologies, in particular to developing countries, underlining the need for enhanced cooperation among States in combating the criminal misuse of information technologies and stressing the role that could be played by the United Nations and other international and regional organizations, welcoming the work of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and recognizing with appreciation the work of the Commission on Crime Prevention and Criminal Justice at its ninth and tenth sessions, decided to defer consideration of the subject of the criminal misuse of information technologies pending work envisioned by the plan of action.

3. In its resolution 56/261 of 31 January 2002, the General Assembly took note of the plans of action with appreciation; called upon the Secretary-General to ensure the widest possible circulation of the plans; invited Governments to carefully consider them as guidance in the formulation of legislation policies and programmes; and invited the Secretary-General to consider carefully and implement, as appropriate, the plans, in accordance with medium-term plans and programme budgets and subject to available resources.

II. Status of ongoing efforts to prevent and control high-technology and computer-related crime

A. General trends and developments

4. The field of high-technology and computer-related crime continues to be characterized by rapid evolution on the part of offenders, preventive, legislative and law enforcement efforts and the underlying technologies themselves. During 2001, a number of States established or enhanced their capacities to deal with high-technology and computer-related crime as a specialized area of legislation and law enforcement. Legislative reforms included the creation of new offences, the expansion of existing offences and the modernization of investigative powers such as search and seizure and wiretapping authority to deal effectively with crime in the new electronic environments. That trend is expected to continue, in particular in Europe, where States are now engaged in implementing the Convention on Cybercrime, adopted by the Council of Europe in Budapest on 23 November 2001.[3]

5. The relationship between government crime control efforts and the role of the private sector companies involved in the production of hardware and software and in the delivery of services continued to be a major issue, at both the policy and legislative level and the investigative and law enforcement level in many countries. Major concerns included the extent to which crime control and investigative aids should be incorporated into new technologies, the costs of storing, intercepting and retrieving data sought by law enforcement agencies and a series of policy, criminal and civil liability issues arising from the relationships between the State, service providers and individual customers. Following a series of major virus and denial-of-service attacks during 1999 and 2000, a group of major high-technology companies established and funded a joint non-profit centre, the Information Technology Information Sharing and Analysis Centre, to set aside competitive rivalries and combine efforts against computer-related crime. Within major technology companies, the incorporation of security features into new software became a higher priority, as the companies sought to reduce their own vulnerability to attack and out of recognition that the fear of crime

and the presence of effective security features had become an important factor in the decisions of consumers shopping for new products.

6. The use of technical security and crime prevention methods continued to expand during 2001, a reflection of the nature of the technologies, their continuing expansion and the difficulties encountered by traditional legislative and law enforcement responses, in particular in transnational cases. These included established products such as programs to identify and screen out hostile programs such as worms and viruses from stored and transmitted data and barrier products such as firewall software. "Geolocation" programs, which identify the geographical source of online communications, were used increasingly to deny access to those located in jurisdictions where gambling, pornography or other activities are illegal. This was greeted positively by the law enforcement community, but criticized by advocates of a completely open Internet and experts who pointed out that the effective use of such programs depended on the willingness of web-site operators to use them and on their knowledge of the legal restrictions imposed by other countries. Most experts also agreed that such programs effectively prevented accidental breaches and were effective against unsophisticated offenders but not against more knowledgeable offenders, who could easily conceal their true geographical locations from the software and web-site operators using it. The use of filtering software, which identifies and blocks content inappropriate for children or other unauthorized users, also continued to expand and many operators of adult web sites incorporated products intended to trigger such software. Cryptographic applications were also used to protect sensitive communications and prevent users without permission from gaining access to proprietary or sensitive data.

7. Within the law enforcement community, investigators with the skills needed to intercept communications in high-speed, digital media, conduct successful searches of stored data, decrypt encrypted data and perform other similar functions were recognized increasingly as a scarce, valuable and specialized resource. Many agencies have now established specialized units, called upon to assist other investigators in areas ranging from counter-terrorism to drug trafficking and economic crime. Major concerns include the high costs and long-term investment represented by training investigators, the difficulty of retaining skilled investigators who can command higher salaries in better-funded private sector jobs and the simple problem of ensuring that investigators keep abreast of the deployment of new technologies and the latest criminal techniques for using them.

8. Member States are concerned about the potential offensive and defensive uses of new technologies by terrorist organizations and such concerns have been heightened considerably by the attacks of 11 September 2001. Experience shows that sophisticated terrorist offenders are already using the Internet to communicate. In that context, strong encryption and other security products have been used defensively to shield communications and stored data. The potential for offensive uses in support of terrorist objectives has also led a number of countries to establish specialized agencies dedicated to protecting data-processing, communication and other critical high-technology infrastructure from cyber-attacks.

9. The investigations that directly followed the September attacks also disclosed the use of the Internet to obtain information that could be used to plan attacks or obtain materials needed to make or improvise chemical, biological or radiological weapons. Several States that responded to a United Nations survey on, inter alia, the criminal misuse of explosives expressed their concern about the availability on the Internet of information about how to produce explosives and how to make explosive devices;[4] and a person arrested in connection with an attempt to detonate an explosive device concealed in his shoe while on board a commercial flight from Paris to Miami on 22 December 2001 was reported by media sources to have told investigators that he had made the device using information obtained from the Internet. Similar concerns were expressed on the part of agencies involved in drug law enforcement with respect to the availability of online information about how to produce synthetic drugs and where to obtain the necessary ingredients.

10. Other computer-related and high-technology offences also continued to raise concerns during 2001. Among the more prominent was the use of digital technologies and the Internet to produce and disseminate child pornography. Several participants in the Second World Congress against Commercial

Sexual Exploitation of Children, held in Yokohama, Japan, from 17 to 20 December 2001, linked possible increases in the exploitation of children and the overall volume of child pornography to that expanded market[5] but noted that a number of large-scale Internet child pornography operations, many of them transnational in scope, had been successfully broken up by cooperative law enforcement operations. Papers presented at the World Congress also linked the Internet to other paedophile activities, including child sex tourism and child abduction.

11. Concerns were also expressed about the increase in identity theft, in which personal data are used to allow offenders to impersonate the individual whose data were stolen. Combined with the anonymity of online transactions and other activities, identity thefts were used in connection with a range of crimes ranging from fraud to terrorist activities. Other criminal activities reported included an increasingly wide range of crimes involving fraud, online extortion, money-laundering and computer-assisted smuggling and crimes against computer systems and their users, involving viruses and other hostile programs and denial-of-service attacks. One new development with respect to fraud was the use of false Internet charities established to attract donations in the immediate aftermath of the terrorist attacks of 11 September, taking advantage of the fast reaction times possible with the establishment and removal of new web sites.

12. Online activities also created a number of emerging problems for national regulatory enforcement schemes in areas such as taxation, business regulation and the enforcement of environmental standards, where foreign storage of data, the increasing use of encryption and the ability of companies in one country to deal directly with customers in another have made regulatory, inspection and audit requirements more difficult to enforce. One example of this is the use of online pharmacies, which were identified as a problem in the report of the International Narcotics Control Board,[6] as well as by experts of the Customs Cooperation Council (also called the World Customs Organization) and by the Commission on Narcotic Drugs. The concern of the International Narcotics Control Board is primarily with the illicit shipment of narcotic drugs and psychotropic substances, but other sources suggest that the problem is broader, extending to many medicinal and other drugs that are subject to basic customs controls and medical prescription regimes in various countries. This poses a problem not only for criminal law enforcement, but also for health authorities, customs agencies and other regulatory bodies.

B. Developments within the United Nations

13. In its resolution 1999/23 of 28 July 1999, entitled "Work of the United Nations Crime Prevention and Criminal Justice Programme", the Economic and Social Council requested the Secretary-General, taking into account the activities of the workshop on crimes related to the computer network, held at the Tenth United Nations Congress on Crime Prevention and Criminal Justice, to conduct a study on effective measures that could be taken at the national and international levels to prevent and control computer-related crime. The report of the Secretary-General on the conclusions of the study was before the Commission at its tenth session (E/CN.15/2001/4). Several speakers acknowledged the gravity of high-technology and computer-related crime and emphasized the importance of taking action against such crime at the international level, including in the framework of the United Nations. It was noted that the fight against high-technology and computer-related crime required numerous sophisticated investigative measures and that following a common approach to fighting such crime was of vital importance.

14. The plans of action annexed to General Assembly resolution 56/261 for the implementation of and follow-up to the Vienna Declaration included a plan for action against high-technology and computer-related crime, which called upon the Centre for International Crime Prevention:

(a) To support national and international research activities to identify new forms of computer-related criminality and to assess the effects of such criminality in key areas such as sustainable development, protection of privacy and electronic commerce and the measures taken in response;

(b) To disseminate internationally agreed materials such as guidelines, legal and technical manuals, minimum standards, proven practices and model legislation to assist legislators and law enforcement and other authorities in the development,

adoption and application of effective measures against high-technology and computer-related crime and offenders both in general and in specific cases;

(c) To promote, support and implement, as appropriate, technical cooperation and assistance projects. Such projects would bring together experts in crime prevention, computer security, criminal legislation and procedures, prosecution, investigative techniques and related matters with States seeking information or assistance in those areas.

15. Pursuant to paragraph 5 of resolution 56/261, in which the General Assembly invited the Secretary-General to consider carefully and implement, as appropriate, the plans of action, including the plan of action against high-technology and computer-related crime, in accordance with the medium-term plans and the programme budgets and subject to available resources, and taking into account the comments made by the Commission at its tenth session,[7] a more detailed study of the problem and the actions set out in the plan of action will be undertaken as the necessary resources become available.

16. The increasing use of new computer and telecommunication technologies by organized criminal groups remains a matter of ongoing concern. This is particularly true for organizations that produce and traffic in narcotic drugs, which are among the most elaborate and best financed of criminal groups and therefore have access to the best available devices and expertise. The technologies are employed by producers and traffickers in much the same way as by legitimate commercial users. Information concerning the delivery of drug consignments is passed from sender to recipient using media that cannot easily be intercepted or read by law enforcement personnel. Business records are kept in foreign jurisdictions, concealed within large volumes of other data and protected by technologies such as firewalls and encryption to shield them from investigators. Electronic tracking of freight is used by traffickers to monitor items in which drugs or other contraband is concealed and, in the event of any undue delay, to alert them to possible discovery and interception of the shipment. The relative anonymity of electronic fund transfers is being used increasingly to pay for shipments without attracting the attention of law enforcement agents and by the recipients of the payments to launder them afterwards. The Internet is also being used to communicate basic information, such as instructions for the production of synthetic drugs and messages that encourage drug abuse.

17. In the report of the Secretariat of 21 December 2000 on the world situation with regard to illicit drug trafficking, the problem of electronic crime was considered and the recommendation made that Governments develop national policies supporting law enforcement responses (E/CN.7/2001/5, para. 150). Law enforcement agencies were called upon to liaise with service providers to ensure that relevant data was kept by the providers long enough to permit its recovery for investigative purposes and to work together in combating money-laundering via the Internet. In January 2002, a subsidiary body of the Commission, the Heads of National Drug Law Enforcement Agencies, Europe, held a regional meeting of experts to examine the problems faced by law enforcement agencies that encountered new technologies in drug-related investigations. The problems identified by the group included the enormous volumes of stored and transmitted data within which critical information must be identified and found; the increasing dependency of law enforcement on service providers to search for or intercept data and the cost- and security-related implications of this; and the advent of a range of new technologies, such as digital cellular telephones, satellite telephones and secure Internet chat rooms, which were harder to intercept than older methods of communication. Particular concerns were expressed about the advent of strong encryption products, which make intercepted or seized data difficult or impossible to read and which are becoming more common, both as applications that can be acquired and used by offenders and as integral "off-the-shelf" elements of electronic mail (e-mail), cellular telephone and other technologies.

18. In its reports for 1997,[8] 1998[9] and 2000,[10] the International Narcotics Control Board expressed concern about various ways in which new communication technologies were becoming a factor in illicit drug-related activities. In its report for 2001, the Board examined the problem in detail and made a series of recommendations. Generally, the Board noted that organized crime had become globalized and that the availability of new communication technologies had played a role in that development. In the case of international drug-related problems, the effects

included making the operations of producers, traffickers and other offenders more efficient and making the investigation and prosecution of such activities more difficult. The convergence of technologies had meant that offenders used not only computers and the Internet, but also facsimile machines, electronic pagers, pocket organizers and cellular telephones. Such devices are protected with encryption, firewalls and other security software and pre-paid accounts are used to avoid having to furnish service providers with true identities and geographical addresses for billing purposes. The Board also noted the occurrence of cases in which investigative targets had engaged in counter-offensive activities against law enforcement agencies. Some had hired professional security experts to assist in protecting their communications and data storage, while others had used "back-hacking" techniques to attack investigators' computers in an attempt to damage evidence or sabotage investigative efforts. In one case equipment had been stolen from investigators to gain the information needed to intercept their communications, with the result that the investigators were identified and threatened.[11]

19. While the use of new technologies to directly support drug trafficking was clearly a major concern, the Board also identified the use of Internet pharmacies as suppliers of prescribed narcotic drugs and psychotropic substances as a problem for national regulators and, more generally, noted the concerns of experts about the availability of information that encouraged illicit drug use or minimized the risks involved. The dissemination of information about how to produce illicit drugs and the availability of precursor chemicals and related information were also seen as problems.[12]

20. On a more positive note, the Board also examined the increasing use of secure Internet communications as the basis for international cooperation and noted that the Internet could also be used by international and national organizations as a means of prevention, by the dissemination of information to educate and dissuade potential drug abusers.[13]

21. The Board made a number of recommendations intended to ensure that drug enforcement personnel had adequate training, resources and legal powers to deal effectively with the problems mentioned. They related to the resources needed to attract skilled personnel, hardware and software needed to conduct investigations and sufficient critical infrastructure protection to shield investigations from sophisticated attacks. Several recommendations were directed at the positive use of technologies, in particular for education and prevention efforts, as well as cooperation between law enforcement, service providers and users of the technologies to identify and respond effectively to abuses. The Board also discussed the need for international cooperation and standards and recommended speedy ratification of the Council of Europe's Convention on Cybercrime, as well as consideration of the development of a United Nations convention against cybercrime.[14]

22. Following the World Congress held in Stockholm in August 1996, the Government of Japan hosted the Second World Congress against the Commercial Sexual Exploitation of Children in Yokohama from 17 to 20 December 2001, co-organized by the United Nations Children's Fund (UNICEF), End Child Prostitution in Asian Tourism (ECPAT) International and the NGO Group for the Convention on the Rights of the Child. UNICEF and a number of the non-governmental organizations and individual experts who attended expressed concern about the impact of new technologies on the sexual exploitation of children. A major focus of that concern was the ways in which the technologies supported, encouraged or facilitated the production and dissemination of child pornography. The advent of digital photography, for example, had made production much easier, while encryption and steganography were used to conceal pornography from investigators.[15] The Internet itself was used to disseminate child pornography, making relatively low-risk access easy, increasing demand and making detection, interdiction, investigation and seizure difficult. Ease of access and the reduction of risk to offenders were seen as factors contributing to increased demand for child pornography, leading to an increased risk for children. Other concerns were also expressed about new technologies. The use of the Internet by paedophiles to make anonymous contact with children, leading in some cases to abductions, was one such concern. In its concluding declaration, the Yokohama Global Commitment 2001, the Second World Congress called for the taking of adequate measures to address the negative aspects of new technologies, in particular the role played by the Internet in child pornography. It also recognized the potential for new technologies for

[4] See the report of the Secretary-General on the results of the study on the illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes (E/CN.15/2002/9/Add.1). The group of experts on the illicit manufacturing of and trafficking in explosives also recommended that countries take measures to discourage the dissemination of such information, in particular on the Internet (E/CN.15/2002/9, para. 37 (g)).

[5] See "Profiting from abuse: an investigation into the sexual exploitation of our children", UNICEF, 2001 (Sales No. E.01.XX.14); and ECPAT International, "Child pornography", pp. 19-21.

[6] *Report of the International Narcotics Control Board for 2000* (United Nations publication, Sales No. E.01.XI.1), paras. 30, 100 and 133-137.

[7] *Official Records of the Economic and Social Council, 2001, Supplement No. 10* (E/2001/30/Rev.1), part one, chap. III, paras. 36-38.

[8] *Report of the International Narcotics Control Board for 1997* (United Nations publication, Sales No. E.98.XI.1), para. 23.

[9] *Report of the International Narcotics Control Board for 1998* (United Nations publication, Sales No. E.99.XI.1), para. 241.

[10] *Report of the International Narcotics Control Board for 2000* (United Nations publication, Sales No. E.01.XI.1), paras. 30, 100 and 133-137.

[11] *Report of the International Narcotics Control Board for 2001* (United Nations publication, Sales No. E.02.XI.1), paras. 5-83.

[12] Ibid., paras. 19-21.

[13] Ibid., paras. 44-66.

[14] Ibid., paras. 72-83.

[15] Encryption scrambles digital content in accordance with a mathematical algorithm, making it impossible to decrypt and read without a key or password, which is usually known only to the owner or intended recipient of the data. Steganography employs software to conceal the data comprising one computer file within the data comprising another, usually much larger, file. It is commonly used to conceal pornographic text or images within innocuous digital photographs without visibly changing their appearance. The concealed images can usually be identified and retrieved (unless also encrypted), but only if investigators suspect their presence in the first place. Digital photography can be used to create child pornography directly using children or indirectly by altering or "morphing" images of adults to make them resemble children.

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International cooperation in combating transnational crime

Illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes

Report of the Secretary-General

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I. Introduction

1. In its resolution 54/127 of 17 December 1999, the General Assembly requested the Secretary-General, from within existing or extrabudgetary resources, to convene an expert group of no more than 20 members, with equitable geographical representation, to prepare a study on the illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes, taking into consideration Economic and Social Council resolution 1998/17 of 28 July 1998, and to report to the Commission on Crime Prevention and Criminal Justice as early as possible on the results of the study.

2. Pursuant to Assembly resolution 54/127 the Group of Experts on the illicit manufacturing of and trafficking in explosives was convened twice in Vienna, from 12 to 16 March 2001 and from 18 to 21 December 2001.

3. The present report was prepared for the Commission in accordance with Assembly resolution 54/127. It summarizes the discussions conducted by the Group of Experts during their two meetings. It also contains conclusions and recommendations made by the experts arising from the study called for by the Assembly, from other information received, and from their own deliberations. Lists of the participants in the meetings and of the documentation considered by the Group of Experts are annexed to the present report. The results of the study conducted by the Group are contained in document E/CN.15/2002/9/Add.1, and a list of the States that replied to the survey questionnaire or provided other information to assist in the study are annexed to that document.

II. Background

4. In its resolution 53/111 of 9 December 1998, the General Assembly called for the elaboration of a comprehensive international convention against transnational organized crime and, as appropriate, further international instruments, including an instrument combating the illicit manufacturing of and trafficking in firearms, their parts and components, and ammunition, and established an open-ended intergovernmental ad hoc committee for that purpose. In the course of developing those instruments, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime considered whether the instrument dealing with firearms, their parts and components, and ammunition, should also deal with explosives. After some deliberation, and based on legal advice to the effect that explosives did not fall within the mandate established by Assembly resolution 53/111, the Ad Hoc Committee decided to exclude references to explosives.

5. During the deliberations of the Ad Hoc Committee, some Member States expressed the view that an international legal instrument against the illicit manufacturing, trafficking and use of explosives was both feasible and desirable. Other Member States expressed the view that it was not technically feasible to deal with explosives on that basis, and that even if feasible, such an instrument was not needed (see A/AC.254/4/Add.2/Rev.3, footnote 74, and A/AC.254/25, para. 22). In its resolution 54/127 of 17 December 1999, the General Assembly subsequently called for the present study of the illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes.

6. The Group of Experts obtained and assessed information relating to the nature and scope of explosive-related problems within and among Member States, and produced the present study. At its first meeting, the Group reviewed existing documents and instruments dealing with explosives, prepared a survey questionnaire for distribution to Member States, and decided to conduct additional research in several areas itself. The survey questionnaire was disseminated to Member States on 4 July 2001, requesting that they reply as soon as possible, but preferably no later than 30 September 2001. As of 20 December 2001, a total of 50 States had replied, and two further replies were received after the closing of the second meeting on that date.

7. On 10 November 2001, a statistical analysis of the replies received by that date was prepared and distributed to members of the Group of Experts, in order to give them sufficient time to review it prior to the second meeting of the Group When the results were compiled on 10 November 2001, replies had been received from 35 States. Fifteen further replies received up to the closing of the second meeting of the Group on 20 December 2001 were also reviewed and directly taken into consideration by the Group at that meeting. Other additional notes and comments

received from Member States were also taken into consideration. At its second meeting, based on the replies received and the experience of the experts, the Group finalized its study, the results of which are before the Commission (E/CN.15/2002/9/Add.1). The Group also produced conclusions and recommendations, based on its expertise and the results of the study, which are set forth in section IV of the present report.

III. Deliberations of the Group of Experts

8. The first meeting of the Group of Experts was briefed on relevant existing international instruments and there was a discussion of the implications of those instruments for the consideration of the problem of the illicit manufacturing, trafficking and use of explosives. Participants were also briefed on and considered the report of the Group of Experts on the problem of ammunition and explosives (A/54/155) submitted to the General Assembly in 1999 pursuant to its resolution 52/38J.

9. There was a discussion of the marking of explosives, including marking in order to ensure detection by sampling or sniffer devices such as those used to screen luggage and passengers in airports, and more elaborate forms of marking, also sometimes described as tagging, intended to ensure that explosives can be identified or traced prior to, and in some cases even after, detonation has occurred.

10. Marking to ensure detection involved including in explosives chemicals of a nature and volatility which ensured that they would be detected and identified as explosives by sampling devices. Most explosives emitted sufficient traces to permit such detection without any additives, but where that was not the case, certain volatile chemicals were added, marking the explosive. That type of marking was required under the International Civil Aviation Organization (ICAO) Convention on the Marking of Plastic Explosives for the Purpose of Detection, but that instrument did not cover all types of explosive and not all countries were parties to it. Apart from that fact, the major issues considered regarding that type of marking were associated with finding chemical additives that were clearly detectable, that did not degrade stability, durability or explosive performance, and that did not unduly increase the costs of manufacture.

11. Regarding the marking of explosives for the purpose of identification and tracing, or tagging, the Group noted that, while there were some similarities, explosives were not firearms, and the issues raised by the need for tagging were different from those involved with attaching and using serial numbers or other unique markings used on firearms, motor vehicles and other such items. Marking for the purpose of identification and tracing prior to detonation generally involved information stamped, embossed or stencilled onto the casings into which the explosive is packed, since many explosives were soft, semi-solid or even liquid materials that would not accept permanent markings. Even when such markings were applied, in many cases the explosives could be easily repacked or reconstituted by those wishing to conceal identity or origin. Marking for the purpose of post-detonation identification represented even greater technical challenges. Since the explosive and its casing were completely destroyed, efforts to mark had focused on the addition of physical or chemical substances that would leave distinctive particles or residues after detonation. Since the number of variations was much more limited than with physical markings such as serial numbers, there was a limit to the amount of information that could be attached. In most cases, explosive tagging would currently identify only the company or place of manufacture and possibly the approximate date or production lot or batch of its manufacture.

12. It was noted that research was ongoing in a number of countries into all kinds of explosive marking. More detailed and reliable forms of explosive marking had significant potential to reduce explosive-related crime by deterring offenders and assisting law enforcement agencies. The Group of Experts decided to obtain further information about the general state of such research, taking into consideration that in some cases it would be seen as sensitive for reasons of national security or commercial interests.

13. The Group also discussed the nature and scope of explosive-related crime. Generally, incidents ranged from substantial numbers of minor incidents, such as young people and minor criminals experimenting with explosives that were home-made or stolen from legitimate sources, to a small number of major

incidents. Major explosives incidents included accidental detonations in the course of manufacture, transport, storage or use, and intentional bombings capable of causing major loss of life, injury and destruction of property.

14. The Group of Experts noted that most of the major intentional incidents that it discussed involved offenders whose motives encompassed the high profile and publicity generated by large explosions. It considered the difficulties in attempting to develop any clear distinction between terrorist activities and crime in general, but it was aware that, since planting or detonating explosive devices where there was a risk of death, injury or property damage were treated as criminal acts by every State, making such a distinction was not necessary to its work. It therefore decided to collect and analyse data on the basis of including all explosive-related criminal activity without such distinctions.

15. The Group of Experts felt that further information was needed on several key points. General information regarding the overall scope, extent or seriousness of the problem was needed. That included seriousness both in terms of the numbers of offences or incidents, and in terms of the seriousness of some of the major occurrences. It also included information about the nature and extent of transnational elements, since concerted efforts by the international community to produce a legal instrument or take other such action would not be necessary to deal with explosive-related incidents of a purely domestic nature. The nature of transnational involvement could vary, ranging from the simple smuggling of actual explosives, to the involvement of organized criminal groups with other transnational interests in otherwise domestic incidents. On the broadest interpretation, it could even involve the simple transfer of information about how to make explosives or explosive devices from one country to another. The Group decided to consider a relatively wide range of transnational aspects.

16. The Group of Experts decided to seek information by developing a survey questionnaire and distributing it to all Member States, and spent much of its first meeting identifying issues and developing the necessary document. It also decided to seek information through the expertise of its own members in the following areas:

(a) The identification of sources of information about explosives in various Member States;

(b) Issues relating to the marking, tagging and tracing of explosives, as well as the results of any ongoing research in those areas;

(c) Issues of transnationality in incidents, including the various ways in which an incident might be considered as transnational in nature, and the extent to which that actually occurred;

(d) The types of domestic and international legal controls already in place, including such things as security in manufacture, storage, transportation and use, international customs controls, regulations and licensing or authorization systems intended to limit access and ensure the safe use of explosives, and similar matters;

(e) The needs of countries for technical assistance in relevant areas such as the sharing of scientific information about tagging, marking, detection and tracing, the training of forensic and law enforcement experts and the sharing of information about criminal methods and techniques.

17. At its second meeting,[1] the Group of Experts examined the replies to its survey questionnaire, developed an analysis of the replies and completed its study on the illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes. In addition to the analysis of the replies received, it also analysed and summarized existing relevant international instruments and other documents and considered a series of recommendations arising out of the study process.

18. The Group of Experts noted that many of the survey responses contained data that did not distinguish between incidents associated with terrorist groups or activities and those associated with other individuals or organized criminal groups. It decided that, in analysing the replies, the involvement of terrorist elements was in some cases necessary to properly account for the information reported, and that the States that reported that information in most cases identified or characterized the problem as being wholly or partly of a terrorist nature. The Group therefore decided to accept the characterization or designation of terrorism where that was made by reporting States in respect of their own data for the purposes of the survey analysis.

19. The Group of Experts considered the question whether an international instrument dealing specifically with the illicit manufacturing of and trafficking in explosives should be recommended. There was agreement that the results of the study suggested that relatively few incidents of a transnational nature occurred, but it was also noted that incidents were likely to be underreported, and that the potential seriousness of individual incidents should be taken into consideration, even if they occurred relatively infrequently. Some experts were of the view that, while the research suggested some transnational activities, they were not sufficient in extent, frequency or seriousness to warrant the time, costs and efforts required to produce an instrument, having regard to other issues and priorities confronting the international community. Some also expressed the view that, given the state of technical and legal developments in areas such as the marking of explosives, any instrument should not be of a legally binding nature. Other experts noted that none of the existing international instruments dealt with the problem in all of its aspects. Those experts were of the view that an international legal instrument was desirable, having regard to the serious problems encountered by some States and the fact that individual incidents, even if infrequent, could represent serious threats to human life and security.

20. The Group of Experts also noted that its research suggested that many of the transnational incidents that did occur involved activities considered by the States that reported them to be of a terrorist nature. It did not agree on any recommendation regarding the desirability of an international instrument. It did, however, agree that should the United Nations decide to proceed with the development of such an instrument, it should not be restricted in the scope of its application in any way that would exclude any particular form of crime, including terrorism. In this context, it decided to recommend that any such instrument should not be developed as a further protocol to the United Nations Convention against Transnational Organized Crime, which did contain some such restrictions.

21. At the conclusion of its second and final meeting, the Group of Experts adopted a summary of its deliberations, the text of its study on the illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes, and its conclusions and recommendations for further action concerning explosives. It requested that the Secretary-General report thereon to the Commission on Crime Prevention and Criminal Justice at its eleventh session, in accordance with General Assembly resolution 54/127.

IV. Conclusions and recommendations

A. Conclusions

22. The Group of Experts concluded that national laws regarding explosives should establish general minimum standards of care, basic safety and security, and offences for those who fail to meet specific standards. It was also of the view that the basic nature of explosives created significant risks associated with loss, theft or diversion, criminal misuse and accidental detonation, and that any standards set should take account of the basic nature of explosives as dangerous substances. It noted that the vast majority of States that responded to the survey questionnaire considered explosives to be a criminal justice issue, at least in part. Most had established criminal offences and assigned responsibility for explosives matters to officials responsible for public security or safety, criminal law enforcement or similar matters. In many cases, criminal offences and sanctions applied not only to the intentional misuse of explosives, but also to conduct involving carelessness or negligence, and in some cases relating to the enforcement of licensing requirements or other access restrictions.

23. The Group of Experts also considered the role of international law, and recommended that existing international instruments relating to explosives and transnational organized crime be ratified, implemented and applied in appropriate cases. It considered the question whether an international instrument dealing specifically with the illicit manufacturing of and trafficking in explosives should be recommended. A range of views was expressed and the Group did not agree on any recommendation regarding the desirability of an international instrument. Based on the assessment of experts and the results of the study, however, there was general agreement that, should the United Nations decide to proceed with the development of an international instrument, such an instrument should not be restricted in the scope of its application in any way that would include or exclude any particular form of crime, including terrorism. The

Group therefore was of the view that any such instrument should be independent of, rather than subordinate to, the United Nations Convention against Transnational Organized Crime.

24. The Group of Experts noted that many of the most serious explosive-related crimes involved either offenders or activities identified by the States that reported them as being of a terrorist nature, or involved the members or activities of other organized criminal groups. In some cases, such groups were cooperating or were merged to the point where they became indistinguishable. Also, while "organized criminal group" was an internationally defined term, the concept and meaning of terrorism varied. The Group therefore considered the conduct of any future research and development of policies which attempted to distinguish between crime and terrorism to be impracticable.

25. The Group of Experts also considered the role of technical assistance and other forms of international cooperation that could be useful in dealing with transnational cases and in assisting States in building their capacities to deal with domestic problems, where requested. The Group made several recommendations to the United Nations and its Member States in that regard.

26. The Group of Experts further considered the current state of technology and research into the marking of explosives for the purpose of detection as well as pre- and post-detonation identification and tracing. While it was not seen as currently feasible to recommend that mandatory domestic or international requirements be adopted, the Group was of the view that marking offered considerable future potential as a preventive measure, an investigative aid and as a potential deterrent. It noted that research was ongoing in that area and recommended that States consider adopting marking requirements, if and when shown to be technically feasible and economically viable, and that such requirements be adjusted as necessary to keep pace with scientific and industrial developments.

27. A concern raised by both experts and respondents to the survey was the fact that the information now becoming widely available through the Internet and other media included information about the chemistry and production of explosive substances and the construction of such things as detonators, bombs and other devices (A/54/155, para. 30). The Group of Experts considered that unlikely to influence the activities of sophisticated offenders, who were able to obtain the information through other sources. It could, however, assist those with little knowledge of explosives, such as children or unsophisticated offenders, in the making of explosive devices, thereby contributing to additional explosive-related incidents. The Group also considered the difficulties of regulating the Internet and similar media, given the transnational issues raised as well as constraints such as the domestic and international provisions protecting the freedom of expression. It recommended that States consider such means of curtailing the dissemination of such information as were appropriate having regard to those issues.

28. The Group of Experts noted that while many military and commercial explosives substances required sophisticated knowledge and industrial facilities to produce, a number of home-made substances could be produced from commonly available chemicals. The range of common, legitimate uses for those chemicals generally raised concerns about the application of legal restrictions on access and about requiring the alteration of such chemicals in ways that would render them inert while still preserving their utility for purposes other than producing explosives. The Group noted that research in those areas was ongoing, and recommended that it be continued and used as the basis for further controls, if and when that became technically feasible and economically viable.

B. Recommendations

29. Regarding the adoption of national legislation, the Group of Experts recommended that:

(a) National legislation should define and classify explosives in a manner that was adequate to support the creation and enforcement of criminal offences and legal restrictions or other safeguards;

(b) National legislation should provide appropriate offences, penalties and/or administrative sanctions for dangerous or illicit conduct involving explosives, including such conduct that occurred in the course of the manufacture, import, export, transport, transfer, storage, possession and use of explosives;

(c) National legislation should subject the manufacture, possession or acquisition of explosives to legal restrictions intended to deny access to those who were not qualified or who represented an unacceptable risk or danger to individual or public safety. Generally, such restrictions should be contingent on licensing or similar requirements, with licences being available only to those who met specified criteria. Licensing criteria might include such things as competence in the use of explosives, the absence of risk factors such as criminal records, and the establishment of a legitimate need for access to explosives;

(d) National legislation should criminalize the illicit manufacturing of and trafficking in explosives and provide for sanctions that take into account the gravity of the consequences of such offences. Such offences should include offences applicable to those who manufacture, import, export, possess, use or traffic in explosives without the required licence or equivalent;

(e) National legislation should include provisions prohibiting persons who represented an unacceptable risk from acquiring or possessing explosives. Such persons might include those convicted of crimes, juveniles or those not competent by reason of a mental disorder;

(f) National legislation should require the keeping of records respecting the manufacture, transfer, import, export, storage and use of explosives in as much detail as is feasible. At a minimum, that should include records that enable the tracing of explosives back to their sources, including by means of the use of end-user permits and similar requirements;

(g) National legislation should include requirements that explosives manufacturers and dealers report all thefts or losses of explosives to the appropriate law enforcement authorities;

(h) National legislation should incorporate appropriate regulatory standards for both safety and security. They should include manufacturing, storage and transportation standards that were appropriate to the types and quantities of explosives involved; that established safe working conditions for those involved; and that required those involved to disperse or compartmentalize explosives and to avoid residential, populated or public areas where detonation would result in loss of life. They should also include specific controls on the manufacturing, storage and transportation of sensitive explosive substances.

30. Regarding the development and application of international instruments, the Group of Experts recommended that:

(a) States that had not ratified the relevant international instruments should become parties to and implement them as quickly as possible. That included instruments that dealt with explosives and the United Nations Convention against Transnational Organized Crime, which could be applied to cases that involved the activities of organized criminal groups and an element of transnationality, where its other conditions for application were met;

(b) States should consider, if established as feasible by research and technological developments, the expansion or supplementing of the ICAO Convention on the Marking of Plastic Explosives for the Purpose of Detection to call for the marking of all otherwise undetectable explosives for purposes of detection (see A/54/155, paras. 80-83);

(c) States should consider expanding the scope of the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex) to require the criminalization of the illicit manufacturing of and trafficking in explosives;[2]

(d) Any further international legal instrument dealing with explosive-related crime, in the event that the international community should decide to develop such an instrument, should not be limited in its application to any form of crime, including terrorism, and should not be a subordinate instrument to the United Nations Convention against Transnational Organized Crime.[3]

31. Regarding matters of technical assistance and international cooperation the Group of Experts further recommended that:

(a) States should accelerate research into the marking of explosives for the purpose of identification both before and after detonation. To the extent that such research established that the marking and tagging of explosives was technically feasible and economically viable, States should consider adopting legislation requiring marking on explosives manufactured in or imported into their jurisdictions,

and cooperate to develop, disseminate and implement common standards for marking and tagging. To the extent feasible, such standards should include the tagging of explosives for the purpose of post-detonation identification and tracing, and incorporate information in as much detail as possible to assist investigators. Such information may include elements such as the type of explosive and the date and place of manufacture;

(b) Member States should be encouraged to share information, including criminal intelligence, among explosives experts as freely as possible, bearing in mind that such information should not fall into the hands of potential offenders. Subject areas in which information should be shared included the following:

(i) The manufacturing and technical nature of specific explosives to facilitate identification, tracing, detection and the training of experts;

(ii) Devices or techniques used by criminal individuals or groups, in particular if similar information was likely to be passed from one country to another through criminal channels;

(iii) Legal cross-border commerce involving explosives, where needed to assist the countries involved in providing adequate security or other measures;

(iv) Specific criminal activities, both informally where possible and through normal mutual legal assistance channels where necessary;

(c) To facilitate the sharing of information, States should consider the establishment of a medium or forum for communication between law enforcement agencies, with a degree of security appropriate to the sensitivity of the information being shared;

(d) States should assist one another in establishing the identity, legitimacy and legal eligibility of individuals and companies involved in the legal import, export and transit of explosives;

(e) States should engage in and support technical assistance where possible, either bilaterally or through the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat, in the following areas and in accordance with the needs of requesting States:

(i) The development and dissemination of technical materials to assist investigators, legislators, regulators and other officials;

(ii) The training and professional development of experts in relevant areas, including the deactivation of explosives devices, the investigation of explosive detonation and other explosive-related incidents, and the monitoring and inspection of legitimate explosive-related activities;

(iii) The assistance of national experts or investigators, where feasible and requested, in specific criminal cases involving explosives;

(iv) Assistance in acquiring sophisticated apparatus, notably for the detection of explosives by sampling and other methods, and for the analysis of explosives residues, as well as assistance with the training of personnel in the use of such apparatus;

(f) Further research, based on the study conducted by the Group of Experts, in accordance with the findings and recommendations of the Group of Experts on the problem of ammunition and explosives (A/54/155, paras. 104-110), and consistent with Council resolution 1998/17, should be conducted;

(g) States should explore legal, technical and other means of discouraging the dissemination of technical information about the manufacture of explosives and explosive devices, in particular through mass media such as the Internet;

(h) While it was not generally feasible to impose legal restrictions on access to chemicals that were explosive precursors or components, States could consider measures to discourage inappropriate transfers of chemicals such as certain ammonium nitrate compounds. Examples could include requirements or guidelines establishing "know-your-customer" principles similar to those applied as a precaution against money-laundering, requiring distributors or vendors to keep appropriate records of sales to deter improper transfers and assist investigators, or encouraging or requiring the reporting of suspicious transactions;

(i) States should also conduct research into additives or processes for rendering substances such as ammonium nitrate unusable as a component of

explosives, and consider implementing the results of such research, if technically feasible and economically viable;

(j) The United Nations should establish a statistical database to collect and serve as a repository of information about explosive-related incidents from national repositories such as bomb data centres, regional organizations and other sources of such information, taking into consideration the legitimate security and law enforcement needs of Member States;

(k) The United Nations should compile and publish a compendium of relevant international instruments and other documents, to serve as a reference for national policy makers, legislators and law enforcement personnel. Such a compilation would include legal instruments, international and regional agreements, resolutions and other such material;

(l) The United Nations could produce and disseminate legislative outlines or model laws to assist national legislators and support the international standardization of legislative elements such as: criminal offences; negligence and safety-related provisions; licensing requirements and other controls on access; controls on manufacturing, importation and exportation; controls on precursor chemicals; controls on use, transportation and storage; and the keeping of relevant records.

V. Meetings of the Group of Experts

A. Organization

32. The Group of Experts on the illicit manufacturing of and trafficking in explosives held meetings in Vienna from 12 to 16 March 2001 and from 18 to 21 December 2001. The resources available did not permit the assistance of individual experts with travel or other expenses, and it was only possible to provide simultaneous interpretation at the second and final meeting. As a result, some experts were not able to attend in person. Texts of the informal report on the first meeting and of the survey questionnaire were made available to the experts in English, French and Spanish, as appropriate, and other documents were provided to the experts in the languages in which they were received. As decided at the first meeting, individual experts conducted research into specific issues, and all the experts reviewed the replies to the survey questionnaire. The information thus generated was then considered by the Group at its second and final meeting.

33. At the first meeting of the Group, Stan Joubert (South Africa) was elected by acclamation as Chairman.

B. Attendance

34. Seventeen experts were appointed as members of the Group of Experts, in consultation with the Chairmen of the regional groups. The first meeting was attended by eight experts. The second meeting was attended by eight experts and three observers. The participants in the meetings of the Group of Experts are listed in annex I to the present report.

C. Documentation

35. In its deliberations, the Group of Experts had before it the following resolutions of the General Assembly: resolution 52/164 of 15 December 1997, entitled "International Convention for the Suppression of Terrorist Bombings"; resolution 53/111, entitled "Transnational Organized Crime"; resolution 54/127, titled "Activities of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime: illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, as well as consideration of the need to develop an instrument on the illicit manufacturing of and trafficking in explosives"; resolution 55/25 of 15 November 2000, entitled "United Nations Convention against Transnational Organized Crime"; and resolution 55/255, titled "Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime". It also had before it Security Council resolution 1373 (2001) of 28 September 2001, condemning the terrorist attacks against the United States of America on 11 September 2001, and two resolutions of the Economic and Social Council, resolution 1997/28 of 21 July 1997, entitled "Firearm regulation for purposes of crime prevention and public health and safety", and resolution 1998/17, entitled "Regulation of explosives for the purpose of

crime prevention and public health and safety". The Group also took into consideration the report of the Group of Experts on the problem of ammunition and explosives (A/54/155), requested by the Assembly in its resolution 52/38 J of 9 December 1997, as well as a series of international legal instruments and other documents dealing with relevant subjects, including explosives, terrorist bombing and transnational organized crime, and other materials obtained or produced by the research of its members. In addition to the above-mentioned resolutions, a list of the documentation considered by the Group of Experts on the illicit manufacturing of and trafficking in explosives is contained in annex II to the present report.

Notes

[1] The second meeting of the Group of Experts was scheduled for 18 to 21 December 2001, but it was actually able to complete its work and adjourn the meeting on 20 December 2001.

[2] In considering this recommendation, the Group of Experts was mindful of the meaning of the term "trafficking" in the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, as well as the similar meaning in the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials.

[3] See General Assembly resolution 55/25, annex I, article 2 (a), definition of "organized criminal group", and article 3, scope of application.

Annex I

List of participants in the meetings of the Group of Experts

A. Experts

Adrian Baciu
(Romania)

Gilmar Pinto Barbosa
(Brazil)

Giancarlo Roberto Bellelli
(Italy)

Claude Calisti
(France)

Oscar F. Musso Garcia
(Peru)

Jose R. Vivas Guevara
(Colombia)

Joel Hernández
(Mexico)[a]

Satish Chandra Jha
(India)

Carlos Marin Jiminez
(Mexico)[a]

Stan Joubert
(South Africa), Chairman

Sviatoslav Lokutov
(Ukraine)

Sayed Ali Mohammad Mousavi
(Islamic Republic of Iran)

Andrey Perederiy
(Russian Federation)

Ertan Seven
(Turkey)

Lee Sang Sik
(Republic of Korea)

Vlastimil Sporek
(Czech Republic)

William Spruce
(United States of America)

[a] Marin Jiminez was replaced by Joel Hernández at the second meeting of the Group of Experts.

B. Observers

Linda Briza (Algeria)

S. Flores Liera (Mexico)

Guy K. Hummel (United States of America)

David Wulf (United States of America)

Annex II

List of documents before the meetings of the Group of Experts

Document symbol	*Title or description*
A/AC.254/25	Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its seventh session
A/AC.254/4/Add.2/Rev.3	Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime
A/54/155	Report of the Group of Experts on the problem of ammunition and explosives
S/22393, annex I	Convention on the Marking of Plastic Explosives for the Purpose of Detection, adopted by the International Conference on Air Law held under the auspices of the International Civil Aviation Organization at Montreal, Canada, on 1 March 1991
Treaty A-63 of the Organization of American States	Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, adopted by the General Assembly of the Organization of American States in Washington, D.C., on 14 November 1998

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International cooperation in combating transnational crime

Illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes

Report of the Secretary-General

Addendum

Results of the study on the illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes

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I. Introduction

1. In its resolution 54/127 of 17 December 1999, the General Assembly requested the Secretary-General, from within existing or extrabudgetary resources, to convene an expert group of no more than 20 members, with equitable geographical representation, to prepare a study on the illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes, taking into consideration Economic and Social Council resolution 1998/17 of 28 July 1998, and to report to the Commission on Crime Prevention and Criminal Justice as early as possible on the results of the study.

2. Pursuant to Assembly resolution 54/127, the Group of Experts on the illicit manufacturing of and trafficking in explosives was convened twice in Vienna, from 12 to 16 March 2001 and from 18 to 20 December 2001. At its first meeting, the Group reviewed existing documents and instruments dealing with explosives and other relevant subject matter. Its analysis of those documents and instruments forms the basis of section II of the present report. It also prepared a survey questionnaire for distribution to Member States, and decided to conduct additional research in several areas itself. The survey questionnaire was disseminated to Member States on 4 July 2001, requesting that they respond as soon as possible, but preferably no later than 30 September 2001. As of 20 December 2001, a total of 50 States had provided responses, and two further responses were received after the closing of the second meeting on that date.

3. On 10 November 2001, a statistical analysis of the responses received by that date was prepared and distributed to members of the Group of Experts, in order to permit sufficient time for them to review it prior to the second meeting. When the results were compiled on 10 November 2001, responses had been received from 35 States. That compilation and analysis forms the basis of subsections A to H of section III of the present report. Fifteen further responses received up to the closing of the second meeting of the Group on 20 December 2001 were also reviewed and directly taken into consideration by the Group at that meeting. The analysis of those responses, which were consistent with the earlier results, is reported in subsection I of section III of the present report. References to those responses were also added to the original analysis, where appropriate. Other additional notes and comments received from Member States were also taken into consideration.

4. A summary of the discussions of the Group of Experts at its two meetings and the conclusions and recommendations of the Group arising from the study are included in the report of the Secretary-General on the illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes (E/CN.15/2002/9).

II. Analysis of relevant instruments and other documents

A. Report of the Group of Experts on the problem of ammunition and explosives

5. In its resolution 52/38 of 9 December 1997, the General Assembly requested the Secretary-General to prepare a study on the problem of ammunition and explosives. A Group of Experts was established and duly conducted the study, which was submitted to the Assembly by the Secretary-General in 1999 (A/54/155). The study was conducted in the context of initiatives by the United Nations to stem the negative impacts associated with the uncontrolled dissemination and use of small arms and light weapons. It sought to provide a basis on which to decide whether controls on ammunition and explosives might be viable as a response or partial response to the problem. Generally, the perspective of the study is one of arms control as opposed to crime control, and it drew in part on broader examinations of issues relating to the proliferation of small arms and light weapons. The Group expressed concern about a lack of accurate and up-to-date information about ammunition and explosives, and in particular about the lack of responses to a questionnaire it had circulated (A/54/155, paras. 9-10, 22, 27, 34, 36, 38, 47, 102, 104 and 105).[1] It found that controls on ammunition and explosives could not constitute a complete solution to the harm resulting from small arms and light weapons, but that failure to address them as part of a broader solution would represent "a serious flaw and a missed opportunity" (A/54/155, para. 11).

6. Regarding explosives, the report comments on the simplicity of many improvised explosive devices, and takes note of the ease with which information about bomb-making can be obtained in printed materials and on the Internet. It cites misuse of explosive devices by "extreme political groups, terrorists, criminals and disaffected individuals" as a widespread problem, but makes no specific observations about the involvement of organized crime or transnational elements in such incidents (A/54/155, paras. 27-33). On the subject of trafficking, it takes note of the relationship between trafficking in ammunition and weapons and in other illicit commodities such as narcotic drugs, and surveys the sources of such trafficking, ranging from theft and diversion of legal supplies to the retrieval of surpluses remaining in post-conflict areas (A/54/155, paras. 47-57). The comments are specifically directed at ammunition, rather than explosives per se, although some observations may be applicable. The report does make some distinctions between explosives and ammunition, however, noting that explosives, in particular commercial, non-military explosives, have much shorter lifespans than ammunition. Whereas small-arms ammunition remains stable for decades, explosives may deteriorate and even become dangerous over time, leading manufacturers, vendors and users to maintain relatively small inventories, allowing fewer opportunities for theft or diversion. The obvious risks of storing explosives in large quantities provide a further incentive for both commercial and military users to maintain only the required minimum stocks (A/54/155, para. 61).

7. The report examined the state of efforts to mark explosives for purposes which included identification of the type of explosive for users, in order to ensure such things as correct handling and use, tracing and the support of investigations, as well as detection by instruments such as sniffer devices. The report also surveyed the state of efforts in marking for post-detonation identification, or tagging, noting that this was required by law only in Switzerland, and that it was feasible only to mark with sufficient uniqueness to identify the manufacturer and a period of approximately six months, within which the marked explosive had been produced. It further indicated that all the marking efforts were under study in a number of countries, and that there were commercial and forensic concerns about factors such as cost, contamination and the reliability of marking, as well as the effects of various additives on stability and detonation performance (A/54/155, paras. 73-84).

8. The report makes a number of recommendations for preventing and reducing proliferation, but most are more applicable to small arms and ammunition than to explosives per se. One relevant option identified is the establishment of global standards for tagging explosives, including military explosives, which would provide some limited ability to trace them back to a place and date of manufacture (A/54/155, para. 96), although the recommendations in the report extend only to marking standards and not tagging (A/54/155, para. 105 (i)).[2] The report also calls for the investigation and use of new marking technologies, and for better, more transparent sources of information about explosives, including through the establishment of a United Nations database (A/54/155, para. 110). It should be noted that the report discusses the marking of "explosives and ammunition" in the same text, leaving the possibility that some options discussed may have been seen as more appropriate for small arms ammunition than for explosives.[3] The report further discusses possible domestic legal restrictions and security measures that could be used to regulate access to both explosives and those precursor chemicals for which access restrictions are feasible (A/54/155, para. 100).

B. Convention on the Marking of Plastic Explosives for the Purpose of Detection

9. The Convention on the Marking of Plastic Explosives for the Purpose of Detection[4] was concluded under the auspices of the International Civil Aviation Organisation in response to concerns that some types of plastic explosive cannot be detected by the conventional air-sampling, or sniffer, devices. The devices work by detecting small amounts of characteristic chemical vapours, which are emitted by most explosives, but which are not emitted in sufficient quantities by the "plastic" explosives to which it is directed. Detection by sampling is an important element of security screening systems intended to ensure that explosives or devices containing explosives are not placed on board aircraft, where even relatively small quantities of explosive, if detonated, can bring about catastrophic results. The major requirement of

the Convention is that otherwise undetectable plastic explosives be "marked" by adding certain chemicals, listed in an annex. The prescribed additives give off vapours of a type that will be registered by sampling equipment as characteristic of explosives and in sufficient quantities to ensure that any plastic explosive, so marked will be detected. The Convention calls for appropriate security with respect to such explosives and for the destruction of unmarked stocks. It also establishes a technical commission to monitor future developments in this area.

C. International Convention for the Suppression of Terrorist Bombings

10. The International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex, of 15 December 1997)[5] requires States parties to criminalize acts of terrorist bombing, to investigate and prosecute elements of such offences committed within their territories, to assist other States parties in investigating such offences, and to either extradite offenders found in their territories or to prosecute them under domestic law. It does not, however, require the criminalization of actions other than terrorist bombing, including any activities relating to the illicit manufacturing of or trafficking in explosives. Legal assistance and extradition may not be refused on the grounds that the offence involved was of a political nature, but may be refused based on grounds for belief that the purpose of the prosecution is of a discriminatory nature based on factors such as the race, religion, nationality, ethnic origin, or political opinions of the accused. Offences to which the instrument applies include the delivery, placement, discharge or detonation of any explosive or other lethal device in a public place, government facility, public transportation or infrastructure system, where there was intent to cause death, serious injury, or extensive destruction likely to result in a major economic loss. The term "explosive or other lethal device" is defined broadly, including explosive and incendiary weapons as well as any device designed to release or disseminate toxic chemicals, biological agents, toxins or similar substances or radiation or radioactive material, if the device is designed to cause death, serious injury or substantial material damage or is capable of doing so. The instrument applies strictly on the basis of the nature of the act of bombing, the nature of the targets and the intention to cause harm, and does not deal with the motives of the offenders or attempt to distinguish terrorism per se from other motives for explosive attacks. It uses the terms "explosive or incendiary" without defining them, leaving the precise meanings to the States parties called upon to apply the instrument.

D. Security Council resolution 1373 (2001)

11. Following the terrorist attacks that took place in the United States of America, in Washington, D.C., New York and Pennsylvania on 11 September 2001, the Security Council adopted resolution 1373 (2001) of 28 September 2001, calling on States to work together urgently to prevent and suppress terrorist acts through full implementation of relevant international instruments, increased cooperation and a series of other specific measures set out in the resolution. Subject to the wording of individual provisions, these additional measures are legally binding on all Member States. The Group of Experts considered the following specific measures as relevant to the issues before it:

(a) Paragraph 2 (a) of resolution 1373 (2001) decides that States should refrain from providing any form of support for entities or persons involved in terrorist acts, including by "... eliminating the supply of weapons to terrorists";

(b) Paragraph 3 (a) of the resolution calls upon States to "find ways of intensifying and accelerating the exchange of operational information, especially regarding ... traffic in arms, explosives or sensitive materials ...";

(c) Paragraphs 3 (d) and 3 (e) of the resolution call upon States to become parties to relevant international conventions and protocols relating to terrorism and to fully implement those instruments;

(d) Paragraph 4 of the resolution notes with concern the close connection between international terrorism and transnational organized crime, and emphasizes the need to strengthen the global response to such crime as a serious challenge and threat to international security. The forms of such crime mentioned in the paragraph include "illicit arms trafficking" and the "illegal movement of nuclear, chemical, biological and other potentially deadly materials".

E. Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials

12. The Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials was adopted by the organization of American States (OAS) at Washington, D.C., on 14 November 1997 and entered into force on 7 January 1998.[6] It represented the first international legal instrument against illicit trafficking in firearms, and formed the basis of portions of the subsequent Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/255, annex, of 31 May 2001). As with the Protocol, the Inter-American Convention requires States parties to criminalize basic acts of illicit manufacture and trafficking. Unlike the Protocol, however, the Inter-American Convention applies to "explosives", which it defines, subject to certain exclusions, as "any substance or article that is made, manufactured, or used to produce an explosion, detonation, or propulsive or pyrotechnic effect ...". An annex to the Inter-American Convention excludes compressed gases, flammable liquids, and some common devices that employ explosives, such as automotive air-bag systems, consumer fireworks and some signal flares. The instrument also defines as a type of firearm a series of explosive devices, including explosive, incendiary and gas bombs, grenades, rockets and rocket launchers, missiles, missile systems, and mines. Artillery ammunition is not included, possibly because the definitions of "firearm" and "ammunition" would include this, not having any limits on size or calibre. The instrument does not require the marking of "explosives", per se, and requires the marking of the explosive devices defined as "firearms" only "appropriately at the time of manufacture, if possible". A consultative committee was established to promote certain measures related to, or supportive of, implementation of the Convention.

F. United Nations Convention against Transnational Organized Crime and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

13. A series of four instruments, developed between 1999 and 2001, include the Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I, of 15 November 2000), which is directed at transnational organized crime in general, and three protocols, which contain elements directed at specific activities in which organized criminal groups tend to engage. During the process of negotiating the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, proposals were made to incorporate measures against illicit trafficking in explosives as well, but a number of States had specific concerns about the technical feasibility of applying similar regulatory measures to both firearms and explosives. Some States also had more general concerns about the feasibility of measures dealing with explosives, or whether an international instrument relating thereto was needed. Following discussion at several sessions of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, it was decided not to deal with explosives on the basis of advice that they were beyond the mandate set for the Committee by the General Assembly (see A/AC.254/4/Add.2/Rev.3, footnote 74, and A/AC.254/25, para. 22). That does not necessarily exclude explosive-related offences from the ambit of the Convention, however. While the technical provisions of the Protocol, such as the requirements to mark firearms and keep records of transnational transfers, do not apply, the Convention itself applies to any offence which is a "serious crime", is "transnational in nature", and involves an "organized criminal group" (article 3): "Serious crime" is defined as "conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty" (article 2, para. (b)), a standard likely to be met in most countries in cases where explosive devices are planted or detonated, and possibly in other cases, such as theft or diversion, as

well. The Convention would apply in such cases, where the necessary elements of organized crime and transnationality are also present or suspected.[7] It may also apply in some cases where explosive-related activities of an organized criminal group occur incidentally to other criminal activities which trigger its application, such as cases where the use of explosives involves more serious offences such as murder.

III. Analysis of the responses to the survey questionnaire on the illicit manufacturing of, trafficking in and criminal misuse of explosives

A. Background

14. On 4 July 2001, a note verbale containing a questionnaire asking 14 basic questions about the nature and extent of problems related to the illicit manufacturing of and trafficking in explosives and their use for criminal purposes was sent to all States Members of the United Nations. The note requested that States respond as early as possible, but preferably not later than 30 September 2001, to permit sufficient time for the results to be compiled and reviewed by the Group of Experts prior to its second meeting. The compilation and preliminary analysis was completed on 10 November 2001, at which time 35 States had responded. A further 15 responses were received between 10 November and the conclusion of the meeting, on 20 December 2001, and two additional responses were received after the meeting. The latter responses were generally consistent with the initial responses and were taken into consideration in drafting the analysis and in the other work of the Group of Experts. Additional issues raised by the latter responses are also discussed separately in section I below.

15. In total, the following 52 States took part in the survey: Algeria, Azerbaijan, Belgium, Bolivia, Botswana, Bulgaria, Chile, China, Colombia, Cyprus, Czech Republic, Denmark, Eritrea, Estonia, Finland, Gambia, Germany, Guatemala, Guyana, Honduras, India, Indonesia, Japan, Jordan, Kuwait, Lebanon, Lithuania, Malta, Mauritius, Mexico, Monaco, Morocco, Namibia, Netherlands, Panama, Peru, Poland, Qatar, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and United States of America.

16. The questionnaire sought information in three major areas: background information about the sources of information provided; information about actual explosive-related incidents; and information about legal measures adopted to control the access to or use of explosives in each responding country. Some of the States that responded did not answer all of the questions asked. In some cases the information may have been seen as sensitive for law enforcement or security reasons, and several States indicated that some of the requested information was either not gathered or not centrally compiled.

17. Statistical information about occurrences was requested over a five-year period, from 1995 to 1999, inclusive. The absolute numbers provided by respondents were then averaged over the five-year period, and, where indicated, expressed in rates per 100,000 inhabitants to facilitate comparison between countries. While a statistically significant number of States responded, fewer than half of the 189 States members did so. Further, those responding may not necessarily represent a random sample of countries. One possibility is that those States that considered explosive-related crime to be a serious problem were more likely to respond, resulting in the possible over reporting of incidents.

18. It should also be noted that, in many cases, the actual numbers of incidents in some countries are small enough to be measurably affected by the activities of single offenders or groups of offenders. That is particularly true in places where the systematic activities of organized crime or terrorist groups may account for relatively large numbers of related incidents that do not occur randomly in terms of timing or geography. Further, it should be noted that the dangerous nature of explosives leads to incidents that may range from relatively minor occurrences to the mass-casualty events caused by large vehicle-transported explosive devices. Major incidents of that kind are sufficiently large to alter the entire statistical profile of a country over the study period. Two such incidents, the vehicle bombing of a government building in Oklahoma City, Oklahoma, United States of

America, on 19 April 1995, which did affect the results for that country, and the explosion of a fireworks factory in Enschede, the Netherlands, in May of 2000, which occurred just outside the study period, are mentioned, but there may well be others of which the Group of Experts was not aware.

19. Finally, some variations in the reporting of incident rates may have been introduced by differences in the treatment of incidents in the national statistical repositories from which the data were reported. A series of explosions detonated by a single individual or group in a short space of time, such as the 1993 attacks at Mumbai, India, discussed below, might be treated by one country as a series of incidents or occurrences, while another might treat them as a single incident because a single investigation was conducted. On the same basis, the production of a number of explosive devices reported by Estonia could be treated as one criminal incident or many, depending on national statistical practices, how the investigation progressed, and how the devices were eventually used or recovered by law enforcement. Conversely, in some countries, the loss or theft of explosives and their subsequent recovery may be treated as two separate incidents, in particular if they occur in different years or statistical reporting periods. In transnational cases, such as smuggling, the same criminal act could also generate incident reports in more than one country.

20. Based on the data received and the comments of several States that responded to the survey questionnaire, most States did not appear to distinguish between terrorism and crime. Most appeared to consider terrorism as one form of organized crime. Several either specifically stated that data were provided on that basis, or identified organized criminal groups that they considered to be of a terrorist nature. The Group of Experts noted that its mandate (General Assembly resolution 54/127, para. 5), called for a study of illicit manufacturing and trafficking by "criminals" and use for "criminal" purposes, which neither included nor excluded terrorism per se. It also expressed the view that, while political questions raised by terrorism were beyond both its expertise and its mandate, in cases where explosives were involved, terrorist activities were also criminal activities, and that the criminal or criminological aspects of terrorism were within its mandate in such cases. Many responding States and several members of the Group also reported information about cases in which offences had been committed by groups involved in both terrorist and more conventional criminal activities to the point where classifications that sought to distinguish between crime and terrorism were not feasible, as well as cases in which terrorist groups and conventional organized criminal groups cooperated in criminal activities. Therefore, in preparing its study, the Group of Experts generally considered that the data received and the analysis of the data were conducted on the basis that individuals, groups and activities reported as being of a criminal nature by the reporting States also included individuals, groups and activities that would be classified as being of a terrorist nature by those States.

B. Sources of information in each country (questions 1-5)

21. Most responding States had more than one government department or ministry that was responsible for explosive-related matters. In almost every case (31 of 35 States), ministries responsible for domestic security, crime, law enforcement or customs controls played a leading role, and in many responses interior ministries or similar entities were the only ones indicated. The high degree of involvement of such ministries suggests that most States consider explosives a sufficiently serious concern to be dealt with by criminal justice or national security mechanisms. That is corroborated by the answers to question 10, in which every respondent indicated that it had established criminal offences and licensing or similar laws relating specifically to explosives. The role of law enforcement agencies is probably increased in many countries by the frequent use of criminal investigators and forensic experts in explosives incidents to determine at the outset whether criminal behaviour may have been involved and whether a full criminal investigation should ensue.

22. National ministries responsible for industrial development, technology, transport and the environment were listed by 12 of 35 States. Such ministries appear to have roles in three major areas. Some responses suggested involvement in regulation of domestic industries that develop and manufacture explosives, while others indicated involvement in the regulation of explosives in industries where they are used, such as mining and agriculture. The third area of

involvement was that of safety regulation, both generally and in the context of particular risk areas, such as the transportation sector.[8]

23. Eleven of 35 States reported some degree of responsibility on the part of ministries of defence, military affairs or munitions. In many of those States, it appears that civilian and military sectors of government enjoy approximately parallel jurisdictions over similar activities, such as manufacture, transport and use, which take place in civilian activities or industries and in the military forces. Given the national security concerns that arise in this area, it is possible that additional countries have similar military jurisdictions, but reported only on their civilian agencies. In some cases, military agencies were also listed because they had specific responsibilities in the area of bomb disposal, even in cases not otherwise associated with the military.

24. All but three of the 35 responding States indicated that statistical information was kept, but the majority (22 of 35) indicated that it was not publicly available, and others cited limits on the disclosure of the information for technical, security or other reasons. Of these States, however, most were able to provide at least some information in response to the survey. Ten States indicated that at least summaries of statistical information were made public. Two States did not have any statistics available concerning crimes or incidents and responded only to the questions dealing with legal controls.

C. Explosive-related incidents (questions 6-9)

25. Generally, the responses indicated that explosive-related incidents occur relatively infrequently. Even in the eight States that reported relatively high annual rates of incidents, ranging from 2.00 to 22.35 per 100,000 inhabitants, those incidents were only a small fraction of overall offending. The United Nations Survey on Crime Trends and the Operations of Criminal Justice Systems lists overall crime rates ranging from 756 to 19,309 offences per 100,000 inhabitants for the same countries.[9] The average of 16.35 explosive incidents reported by Peru, for example, represents only about 2.5 per cent of the rate for all crimes, and the figures reported by Denmark amount to only about 0.03 per cent of its overall crime rate. Several States indicated that the numbers of incidents were too small to warrant counting, while others reported levels too small to be statistically significant.

26. Of those States that reported rates in excess of 2 incidents per year, however, rates rose sharply. The average of the reported rates was 2.42 incidents per 100,000 inhabitants per year. Four States reported rates ranging from 7.14 to 22.35 incidents. The major contributing factors appear to be a combination of the availability of explosives and their use by specific organized criminal groups. Algeria (7.14 incidents) reported the involvement of two major organized criminal groups, known as the Armed Islamic Group and the Salalfi Group for Call and Combat; Estonia (19.88 incidents) reported a combination of organized crime use and widespread availability of military explosives and devices from former Soviet stockpiles; and Lebanon (22.35 incidents) cited explosives remaining from its civil war and subsequent military occupation. The fourth State, Peru (16.35 incidents), made no observations, but occupies a region where organized crime activities and conflict conditions may well have affected incident rates.

27. The presence of significant quantities of explosives in post-conflict or other areas might increase incident rates for several reasons. The most likely factor is that the simple availability of explosives may induce potential offenders to select them in preference to less available instruments, such as firearms or other weapons, or to choose offences in which explosives may be used simply because they are available. For example, explosives may be used to commit homicides in preference to other weapons, or organized criminal groups might choose extortion in preference to other offences because the threat of explosives is seen as credible both by offenders and potential victims. The widespread availability of explosives is also likely to be associated with the presence of individuals who know how to use them. Post-conflict areas are usually inhabited by veterans, and regions where explosives are commonly used for other purposes, such as mining, agriculture or construction, will have residents familiar with explosives in those contexts, and who may be tempted to put their knowledge and skills to criminal uses.

28. The presence of "left-over" military munitions in post-conflict regions also raises methodological

questions. Countries where significant numbers of incidents, deaths and injuries are due to land mines and other unexploded munitions face the question of whether to record these as crimes, accidents, or to create a separate statistical category for them. In countries where landmines are a major problem, rates of detonation, injuries and deaths far exceed comparable crime rates, potentially rendering any statistical comparisons meaningless.[10] At least one responding State, Namibia, raised the question of landmines remaining after an old conflict and of newer devices planted for insurgent or criminal purposes.

29. Apart from those considerations, recording and reporting variations are probably most significant in the figures reported for incidents in which explosives were not detonated. While question 7 asked for information about incidents involving such things as theft or smuggling, question 6 did not explain what was meant by incidents in which explosives were not detonated. In some cases, respondents gave higher rates of incidents involving non-detonation than detonation (for example, Peru), while, in others (Poland), the higher figures were for detonation incidents. While that could be a result of actual differences in criminal behaviour, such as the widespread planting of inactive devices or warning of authorities in time to permit deactivation, it is more likely a result of differences in the gathering, recording and reporting of statistics. Some States may have limited non-detonation incidents to incidents in which devices were recovered or deactivated prior to detonation, while others may have reported a much broader class of incidents, including such things as theft, smuggling and illegal possession or licensing infringements.

30. Incidents involving injuries or property damage are also less likely to be statistically recorded than incidents that involved fatalities. Peru, for example, reported overall incident levels far higher than did Colombia, but Colombia reported higher death rates, suggesting either a higher rate of serious detonations in Colombia, or that Peru reported incidents based on a larger, more broadly defined classification than did Colombia. To avoid those uncertainties, the study uses as the two major indicators of the overall frequency and seriousness of explosive incidents the total average incident rates for each country and the total average death rates, both calculated in terms of occurrences per 100,000 persons per year.

31. While explosive-related crimes are less frequent than many other forms, they are capable of causing serious consequences. Single incidents occasionally cause mass casualties and major property damage. That fact, when combined with the relatively low numbers of explosive-related incidents in general, requires that any link between offending levels and the overall seriousness of the problem be treated with caution. That is illustrated by the Netherlands, which reported an average of one death per year and no major incidents or fatal accidents from 1995 to 1999, but then suffered 20 deaths and major property damage in a single incident when several explosions from a burning fireworks factory devastated a large part of the town of Enschede in May of 2000, shortly after the end of the study period. Similarly, the explosive attack that destroyed a United States government office building in Oklahoma City on 19 April 1995 and killed 168 people resulted in an eight-fold increase in the annual rate of explosive fatalities in that country, and more than doubled its five-year average as used in the study.[11] Results of the statistical analysis of the data are presented in table 1.

Table 1
Average annual explosives incidents and average annual deaths, per 100,000 population, 1995-1999

Country	*Incidents*	*Deaths*
Algeria	7.14	1.01
Bolivia	--	--
Botswana	0.19	0.04
Bulgaria	2.00	0.08
Colombia	2.99	0.76
Cyprus	3.22	0.10
Czech Republic	0.73	0.04
Denmark	2.85	--
Estonia	19.88	0.49
Finland	--	--
Germany	0.04	0.01
Guatemala	--	0.06
Honduras	0.22	0.02
India[a]	0.04	0.26
Indonesia	0.01	0.00
Japan	0.07	0.00
Jordan	--	--
Kuwait	--	--
Lebanon	22.35	0.11
Lithuania	1.14	0.04

Country	*Incidents*	*Deaths*
Malta	--	--
Mauritius	--	0.00
Namibia	--	--
Netherlands[b]	1.12	0.01
Panama	--	--
Peru	16.35	0.05
Poland	0.46	0.04
Singapore	0.02	0.00
Slovakia	1.50	--
Spain	0.33	0.01
Sweden	0.27	0.00
Switzerland	0.24	0.01
Turkey	0.95	0.08
United Kingdom of Great Britain and Northern Ireland	--	--
United States of America[c]	0.72	0.019 0.007

[a] Statistics from the 1993 Mumbai incidents (outside the study period) are not included.

[b] Statistics from the May 2000 Enschede explosion (outside the study period) are not included.

[c] Figures for the United States indicate five-year average fatality rates per hundred thousand, including (0.019) and excluding (0.007) the April 1995 Oklahoma City explosion.

D. The extent to which incidents involved organized criminal groups and/or transnational elements (questions 7 and 14)

32. Information was sought (questions 7 and 14) about the occurrence of the involvement of organized criminal groups and elements of transnationality. Apart from their relevance in assessing the general seriousness of the problem, both of those factors would be relevant in considering whether to develop a further protocol to the United Nations Convention against Transnational Organized Crime, since neither that instrument nor its existing protocols generally apply to activities that do not involve organized criminal groups or some element of transnationality (see articles 2 and 3 of the Convention).[12] Further, the extent to which transnational elements are present is relevant to the question whether a response of any kind on the part of the international community is warranted. Absent elements of transnationality, the problem would be a matter for each individual country to resolve at the domestic level. In that case, the only appropriate international response, if any, might be the sharing of information or technical assistance with such things as legislative, law-enforcement or forensic expertise to support domestic efforts in States that request such assistance.

33. Asked for their expert opinions, about half of the respondents (17 of 35) indicated that their countries did experience problems relating to the illicit manufacturing of or trafficking in explosives by criminals or their use for criminal purposes. Of those, some expressed the opinion that only use was a problem, 16 indicated that no problem existed, and two expressed no opinion.[13] On the question whether such a problem, if it existed, involved significant transnational elements, the majority (22 of 35) expressed the opinion that transnationality was not a significant problem. Of those, 16 respondents reported no problems of any kind, transnational or otherwise, while a further six indicated domestic problems without significant elements of transnationality. Eleven expressed the view that significant transnational elements were present, and two expressed no opinion. Of the responses indicating no major problem of transnationality, one did indicate concern about the transnational availability on the Internet of information concerning the making of explosives and explosive devices.

34. Of the six States which did report significant transnational elements,[14] most have either experienced problems with groups they consider to be of a terrorist, subversive or insurgent nature, or are located in post-conflict regions where the smuggling of surplus military munitions was a factor. Several, including Algeria, Colombia, Indonesia and Namibia, made specific comments to that effect in their responses. India supplemented its response with a letter outlining problems it has experienced with cross-border terrorist activities, including a one-day series of attacks on the city of Mumbai, India, which involved 10 separate devices and an estimated 4,000 kilograms of smuggled RDX explosives, causing 257 deaths, 713 serious injuries and extensive property damage.[15] India also commented on the relationship between transnational organized crime and terrorism. In advocating a unified approach to both problems, it pointed out that, in some cases terrorist and organized criminal groups were

indistinguishable, while in others, it had encountered conventional organized crime groups assisting terrorist groups with smuggling and other illicit services. India argued that a binding legal instrument should be created, but that it should not be linked to the United Nations Convention against Transnational Organized Crime, in order to ensure a broader application to terrorist groups and their activities.[16] States that made no comment but have experienced explosive-related problems of that nature included Jordan, Lebanon and Spain. Estonia, which reported a trafficking problem but did not consider the transnational elements to be of a serious nature, described incidents in which explosives and munitions remaining from stocks from the Soviet era were smuggled to other countries by organized criminal groups. The Netherlands, which did report significant transnational elements, cited similar concerns about the smuggling of such explosives into its territory. Two other States that were formerly under Soviet influence, Lithuania and the Czech Republic, also reported transnational elements, but made no comment as to their nature.

35. Of the States whose experts raised concerns about transnationality and the involvement of organized crime, many did not report data in support of their concerns. Only four of 35 States reported cases of explosives smuggled into their territories; no State reported any cases of smuggling from their territories to other States; and only five States reported cases involving any other transnational elements. One possible explanation is that records of such cases are simply not kept or recorded in a format that permitted them to be used in response to the survey. Another likely scenario is that groups sophisticated enough to smuggle explosives or use them in support of transnational crime activities represent a serious threat, but tend to commit small numbers of major crimes, justifying the official concern but not generating significant incident statistics. A further possibility is that sophisticated criminal groups that seek to use explosives in a country may be more likely to try to produce or obtain them domestically, rather than incur the additional risks inherent in smuggling them into the country. Where particular types of explosive are sought by criminal groups, however, local conditions of supply and demand may still contribute to the smuggling of those types, in much the same way as with other commodities. Incidents were not reported as part of the study, but at least one expert was aware of cases in which the military-type explosive Semtex and other military munitions were smuggled by organized criminal groups, both for the purposes of use and resale. Results of the analysis of responses are presented in tables 2 and 3.

Table 2
Analysis of responses

Incidents involving	*Number of States reporting incidents*
A. Elements of transnationality	
Explosives smuggled into territory;	2
Explosives smuggled out of territory	0
Other transnational elements	5
Total	6
B. Organized criminal groups	
Total	6[a]

[a] Including Algeria, which did not report statistical information, but indicated that two identified organized criminal groups were involved in at least some explosive-related incidents.

Table 3
Opinions of national experts on the extent of the problem and whether it involves significant transnational elements

Question	*Response and number of States responding*		
Is there a problem involving the illicit manufacturing of, or trafficking in, explosives or their use for criminal purposes	No problem or problem not serious	Serious problem	No opinion
	16	17	2
If such a problem exists, does it involve significant transnational elements	No problem or problem not trans-national	Transnational problem	No opinion
	22	11	2

E. Other illicit sources of explosives (question 7)

36. In addition to seeking information about the involvement of transnational and organized crime elements, question 7 also asked about other relevant

details of the incidents reported. In formulating the questionnaire, the experts took the view that, in any country, illicit sources of explosives could be divided into three major categories: those smuggled into the country from abroad; those illicitly manufactured; and those made legally and subsequently diverted to illegal possession or use by theft or other means. Information was therefore sought in those three areas.

37. The survey did not seek information about whether particular types of explosive were more likely to be obtained by any particular means, because States were unlikely to keep such data. However, the assessment of members of the Group of Experts was that most military and commercial explosives were relatively unlikely to be illegally manufactured. For those explosives, relatively sophisticated chemical knowledge and manufacturing infrastructure is needed, and in some cases key ingredients are difficult to obtain anonymously, making manufacture of explosives on a clandestine basis difficult. Further, in many countries, those explosives can be more easily obtained from existing sources by means such as theft or diversion from legitimate industrial or military facilities. Some production by criminal individuals or groups is known to have taken place, however.

38. There are also many less sophisticated explosives that are not as powerful, compact or convenient, but which are much easier to manufacture and are adequate for many criminal applications. Members of the Group of Experts were familiar with cases in which those explosives were produced and used. Unlike more sophisticated explosives, the chemicals needed to make such types are common and have many legitimate industrial and agricultural uses unrelated to making explosives. That makes proactive legal restrictions on the substances impracticable and post-detonation or investigative tracing of transactions difficult, especially in regions where they are most commonly found. Some States do, however, encourage or require reporting or recording of large or otherwise suspicious sales of key chemicals such as ammonium nitrate, and may encourage vendors not to sell them in large quantities to unknown or suspicious purchasers. One concern of the experts, which was also raised by respondents to the survey, was the greater availability of information about how to make such explosives on the Internet and in some publications. While limiting such information would not curtail the activities of sophisticated organized criminal groups, it was felt that it might reduce the numbers of incidents generated by less sophisticated offenders.

39. Assuming that offenders will generally tend to acquire explosives from the most readily available and least risky source, the theft or diversion of legitimate stocks of military or commercial explosives is an area of obvious concern. However, relatively few States reported substantial numbers of incidents of that kind, and many of the higher incident levels reported came from countries with relatively sophisticated record-keeping systems (Germany, Japan and the United States). Several other States reported partial information, such as the total quantities of explosives lost or stolen each year, without indicating how many separate incidents had occurred. One State, Peru, reported far higher theft rates, and another, Algeria, reported very high numbers of incidents of illicit manufacture.

40. The fact that most reports came from countries with extensive record-keeping systems suggests that any patterns in the data may have more to do with recording and reporting variables than actual occurrences, and the experts therefore have not relied upon those data. However, the fact that a problem exists in States that keep detailed records does suggest that the lack of data may mask the fact that similar problems exist in States that do not keep records. It is also possible that the countries that did have records, being relatively industrialized, may have larger explosives-manufacturing industries, and hence larger quantities that could be targeted by criminals. No State indicated that theft or diversion from military supplies was a specific problem (nor was that information sought), although several did provide comments that indicated that smuggling or trafficking in surplus munitions remaining from past conflicts was a problem.

41. The lack of data in that area may also mask a true picture of the seriousness of individual incidents, as well as links between the theft, smuggling or diversion of explosives and the subsequent use of those explosives for criminal purposes. When asked about seriousness (question 9), eight States reported a total of at least 171 separate incidents in which more than 100 kilograms of explosives were involved. Of those incidents, 151 were reported by the United States and a further 8 by other States (Germany, Sweden and Switzerland) with extensive regulatory controls and

record-keeping structures. A number of other States indicated that records were not kept at all, which suggests that major cases may well be underreported in many countries for the same reasons why other cases are underreported there.

F. Proportionate involvement of military, commercial and home-made or other explosives in incidents (question 8)

42. Respondents were asked to estimate the relative proportions in which the type of explosive substance or filler, the type of device and the type of detonator involved in incidents that they reported were of a military, commercial and home-made or other nature. The types of explosive, device and detonator are three distinct categories, likely to vary depending on factors such as the skills of offenders in making devices and the relative availability of components. A single incident, for example, might involve a home-made device, charged with surplus military explosives and a commercial detonator. The explosive substance itself will generally consist of: a compound produced exclusively or generally for military applications, such as C-4 or Semtex, and generally recognized as a military explosive by experts; a compound produced and sold for commercial blasting applications, such as dynamite; or, a compound assembled by the offenders themselves. The survey did not attempt to define or list the specific types in each category, relying on the knowledge of national experts to do so. Where an explosive is detonated, forensic experts can generally determine the compound used by the analysis of residues and other trace evidence found at the scene; but that is a costly and time-consuming process, and it may not be undertaken in every case.

43. Responses to the questions about types of explosives, devices and detonators were mixed. Regarding the basic type of explosive involved, 8 of 35 responses indicated mostly "military" explosives, 7 indicated mostly "commercial" ones, and 6 indicated mostly "home made or other", with the remainder either not responding to the questions or giving proportions in which no single type amounted to 55 per cent or more.

44. The data do not support the drawing of firm conclusions, but one major determinant is probably the relative availability of explosives. Several States in eastern Europe cited concerns regarding the trafficking of surplus military explosives and devices from former Soviet stockpiles, and four of the eight States reporting mostly military explosives, Bulgaria, the Czech Republic, Lithuania, and Poland, were from that region. Two of the remaining countries, Lebanon and Namibia, are in other post-conflict regions where surplus military explosives and devices are common, a fact highlighted by Namibia in its response. Of the seven States reporting mostly "commercial" explosives, only two, Germany and Slovakia, are in or adjacent to eastern Europe. Estonia, which did not report overall proportions, did indicate that, between 1995 and 1999, the use of explosives shifted proportionately, from military to commercial types: it reported a drop from 50 to 10 per cent of military explosives and an increase from 45 to 85 per cent of commercial explosives, as well as significant decreases in detonation incidents. Both trends would be consistent with a gradual reduction of military explosives as surplus supplies were depleted or identified and secured or disposed of.

45. The types of explosive encountered may be linked to availability, but that would not apply to the type of devices. The latter are often constructed by offenders from whatever materials are available, in accordance with the ingenuity and skill level of the maker, and are designed to suit whatever purpose is intended. In some cases, that may involve considerable sophistication, but the majority of devices can be made by anyone with a relatively rudimentary knowledge of explosives and basic electrical circuitry (A/54/155, paras. 27-33). The criminal misuse of professionally constructed devices is probably relatively rare, because the devices themselves are either unavailable or unsuitable for criminal purposes.[17]

46. Regarding the types of explosive devices encountered, 18 States either gave no answer or showed no clear predominance of military, commercial or other devices.[18] Ten States reported mostly home-made or other devices, four reported mostly military devices, and two reported mostly commercial devices. Two of the four States that reported mostly military devices, Lebanon and Namibia, cited past military conflicts as the source of devices such as landmines. The fact that 10 States reported mostly home-made or other devices suggests that most devices used in crime are assembled by offenders, even if military or commercial components were used.

47. Regarding the relative prevalence of different types of detonator, most States either did not know which types were used, did not record the information, or reported figures that did not show any one type predominating. Of those reporting the prevalent use of one type, seven States reported mostly commercial detonators, five reported mostly military ones, and two reported the use of home-made detonators. As with the other categories, that probably reflects relative availability in the various countries, combined with the fact that reliable detonators are difficult (and dangerous) to manufacture without specialized knowledge and equipment, and that the use of unreliable detonators may be as dangerous to offenders as to potential victims.

G. The seriousness of explosive-related incidents (question 9)

48. Members of the Group of Experts were aware that the seriousness of explosive-related incidents can vary widely. Bomb-related incidents, for example, range from hoaxes and relatively minor experimental detonations to mass-casualty vehicle bombings perpetrated by major terrorist or organized criminal groups. As noted above, that is illustrated by the effects of one single truck-bombing of April 1995, which significantly altered the major statistics for the United States for the entire study period. Accordingly, in addition to basic occurrence rates, States were also asked about the numbers of serious or major incidents that had occurred, in terms of deaths, injuries, major property damage and large-scale or systematic illicit activities.

49. Apart from numbers of people killed in criminal and accidental occurrences, most States were not able to provide detailed information in response to those questions. As noted above, eight States reported a total of at least 171 incidents of theft or smuggling of amounts in excess of 100 kilograms, including one case involving 1,700 kilograms of commercial explosive and another involving 100 kilograms of C-4, a powerful military explosive. Apart from the United States, which reported eight detonation incidents resulting in damage exceeding $1 million, only 2 other such incidents were reported, one each by Botswana and Turkey.[19] Cyprus reported 109 cases involving the systematic illicit manufacture of explosive substances or devices, but only 10 such cases were reported by all of the other countries combined: eight by Indonesia and one each by Estonia and Sweden. The reference to "systematic" manufacture was intended to exclude cases where only small amounts or single devices were made, thereby focusing on large-scale chemical manufacture or the production of large numbers of devices. Apart from the report of Cyprus, systematic manufacture appears rare, but the potential seriousness of this activity when it does occur is illustrated by the case reported by Estonia, in which offenders are believed to have manufactured from 50 to 200 separate bombs, which were then smuggled to a criminal group in another country.

50. Several States supplied additional comments about the nature of the serious incidents reported. Generally, they identified various incidents as being associated with one or more of four basic underlying activities. Several comments referred to incidents linked to groups that they identified as being of a terrorist nature, or, in one comment, as being involved in activities of a "civil-war" nature. Some reports also referred to named groups known to be using explosive incidents as part of a strategy seeking social or political changes, or referred to incidents attributed to motives such as "destabilizing" the country. No specific examples of systematic manufacturing were provided by reporting States, but experts were professionally aware of a number of cases in which groups seen as terrorist groups had operated facilities in which explosives and devices were systematically produced. The systematic production of explosive devices and substances is more consistent with the long-term bombing campaigns waged by groups such as the Irish Republican Army, the Basque group known as ETA, the Revolutionary Armed Forces of Colombia or the Armed Islamic Group in Algeria, than with the needs of more conventional organized criminal groups, which are probably more likely to construct and use explosive devices, if at all, on a case-by-case basis.

51. A second reason given by some States referred to the production and use of explosive devices for offences consistent with more conventional forms of organized crime. While there were not enough reports to draw firm conclusions, it would appear that such incidents are rare in most countries, but by no means unheard of. Based on media reports and the experience of the experts, the most common uses of explosives by conventional organized crime groups would appear to

be the murder of persons such as officials, criminal opponents and witnesses, the threat or use of explosives in support of extortion schemes, and the use of explosives to attack or break open vaults, safes, automated teller machines (ATM) or cash-dispensing machines. A major factor in the selection of explosives by offenders of any kind is probably the high profile of detonation incidents and the indiscriminate nature of explosives. Where the intention is to attract public attention or intimidate populations or Governments, explosive incidents may be a logical choice. Where a criminal group seeks to avoid high-profile incidents, mass casualties and the resulting attention from populations, legislators and law enforcement agencies, means other than explosives may have more appeal. There may well be exceptions to that logic, however. Explosives offer the offenders the advantage of setting devices when there is no surveillance and detonating them later, after having retreated to a place of safety, but that is also associated with counter-incentives. For criminal offences such as murder, the delay reduces the risk to offenders of being caught, but explosives are less discriminating than firearms, potentially missing the intended target and killing or injuring others. They also require much greater skill, both to use successfully and to avoid risks associated with accidental detonations. In some offences, such as breaking open safes or vaults, explosives are used because no other instrument can accomplish the same results.

52. The third activity mentioned in connection with both smuggling and illicit manufacturing, in particular by countries in post-conflict regions, was the illicit traffic in surplus military munitions. Reports referred to the use of surplus military explosives to make devices for criminal or other illicit uses, as well as basic smuggling and trafficking in surplus or stolen munitions of various kinds, which raises not only criminal justice issues, but also questions of arms control and national security in many regions.

53. The fourth and final activity mentioned was that which had occurred in the course of, or in support of, the illicit manufacture of fireworks. While the compounds used in fireworks are not generally as powerful as conventional explosives, many are relatively unstable, capable of causing extremely serious fires or explosions when ignited by accidental sources, such as the arcing of static electrical charges. Comments were not provided with the reports of major accidents, but experts were aware that several fatal occurrences take place each year, many of them in manufacturing facilities in which local legal requirements or basic safety principles are not being observed. Basic precautions adopted by reputable manufacturers and users of fireworks include practices that protect manufacturing operations from accidental ignition or detonation and that minimize the damages caused by such an event, practices such as the dispersal of large-scale manufacturing and storage operations and the separation of such operations from residential or other populated areas.

54. Only one country, the United States of America, reported other types of incidents that it considered to be major. Having reported relatively large numbers of domestic theft or diversion cases, it also reported significant numbers of explosives recoveries in that category.

H. Legal controls on explosives (questions 10-12)

55. There was virtual unanimity among survey respondents about the use of legal controls that were specific to explosives and related activities. Question 10 asked whether respondents had such controls, including offences, other controls such as safety standards, and licensing, authorization or other similar requirements. Thirty-four of 35 States answered "yes" to all four questions, and the remaining respondent did not answer the question. In response to question 11, the majority of respondents also indicated that they required some form of licence or authorization as a precondition for most explosive-related activities. Of 34 States that answered the question, 30 applied such controls to basic possession and use of explosives, 31 applied them to transportation, sale or other commercial activities and importation, 27 applied them to exportation, and 26 applied them to manufacture.

56. Least likely to require a licence or authorization was "any dealings in explosive precursors". Licensing and regulating such dealings in general is problematic for most Governments because precursor chemicals include many commonly available substances, such as sugars, fuel oils and fertilizer chemicals. Any extensive regulation or restriction of access to such chemicals is unlikely to be attempted unless the use of those substances as explosive components is seen as a

sufficiently serious problem to warrant the costs and inconvenience to legitimate users. That notwithstanding, over half of the respondents, 18 of 34 countries, indicated that at least some dealings in some precursors were subject to licence or authorization controls. That may be attributable to restrictions attached to more complex chemicals in order to ensure that partially manufactured explosive chemicals are dealt with. In some cases, it may also reflect the fact that some precursors are toxic, corrosive or otherwise dangerous in their own right. In such cases, moderate access controls such as requiring identification for purchasers and ensuring appropriate security for storage and shipment of large quantities of such chemicals may be feasible.[20]

57. An alternative to restricting access to some of the more common precursors considered by some countries is the adoption of legal requirements that those chemicals be altered in some way to ensure that they cannot be used to produce explosives. That is sometimes suggested for ammonium-nitrate-based fertilizers, but there are policy and other concerns that must usually be weighed against the need to reduce the threat posed by explosives in such cases. Those concerns include the cost of additives, possible reductions in the utility or cost-effectiveness of the altered fertilizers for some applications and environmental considerations.

58. Most of the States that required licences or authorizations also kept at least some related records in each category, although 20 to 25 per cent of them did not. The major functions of licensing and record-keeping are usually: the enforcement or administration of user screening to deny access to individuals who are not qualified to use explosives safely, or who represent an unacceptable risk of criminal misuse; and the creation of records that serve as evidence in the case of wrongdoing, thereby establishing a deterrent. The survey did not request details of domestic record-keeping systems, but these may vary widely in terms of the nature of the records kept, how they are kept and the extent to which they are actually available for use and are used to support effective controls on access to explosives. Generally, licences and corresponding records can simply identify an individual to vendors and appropriate officials as a person who is permitted to acquire or possess explosives, or they can serve as the basis for more elaborate records, such as files indicating whether an individual has acquired explosives, and, if so, what ultimately became of them. They can be kept locally or centrally, on systems that may range from paper files to computer networks. Automated systems are much more effective in verifying licences quickly and authoritatively, and in generating relevant information quickly for investigators once an incident has occurred, but they also raise major training, cost and infrastructure challenges, in particular for developing countries. Generally, the degree of legislative and administrative effort expended by Governments in this area can be expected to depend on the availability of financial, technical and human resources, and the extent to which various illicit activities involving explosives are seen as a threat.

59. The marking or tagging of explosives is often cited as a key element of any tracking, tracing or record-keeping system, and for that reason, States were also asked about the extent to which they required such measures (question 12). The concept of marking as it applies to explosives has two distinct meanings. Explosive detectors or sniffers generally work by detecting small amounts of chemical substances that are characteristic of explosives and that evaporate in sufficient quantities to permit detectable amounts present in air to be sampled. Some explosive substances, however, are not sufficiently volatile to emit detectable amounts of such chemicals. The expression "marking of explosives" is most commonly used to refer to the intentional addition of substances that will evaporate and be recognized by detection equipment as being characteristic of explosives, thereby ensuring that any substances thus marked will be detected when sampled.

60. That is the meaning used in the Convention on the Marking of Plastic Explosives for the Purpose of Detection. Of 31 States that answered the question, 18 indicated that they required that form of marking on the casing or packaging of explosives, and 13 indicated that they required the marking of the actual explosive substance for the purpose of detection. Attention was drawn to the Convention in a footnote, and a number of States qualified their responses by saying that they required marking as specified in the Convention, which is limited to plastic explosives, but not otherwise. That leaves open the possibility that explosives exist that cannot be detected by existing sampling apparatus, and which are not plastic explosives subject to the requirements of the Convention. Generally, explosives

are not detected by sampling apparatus either because they do not emit sufficient vapours, or because they do not emit vapours containing chemicals recognized by the equipment as characteristic of explosives. To the extent that such explosives represent a threat of criminal misuse, marking requirements that expand on those of the Convention to include all such explosives could be considered.

61. Marking that is sufficient to support tracing and the unique identification of explosives is more problematic. Unlike the serial numbers applied to firearms, any marking placed on the explosives themselves will be destroyed by detonation unless the method used is exceptionally durable. For that reason, the questions dealing with marking for the purposes of identification and tracing made a distinction between identification and tracing before and after detonation. To some extent, the responses reflected that fact. Of 31 responding States, 17 reported that they required markings on casings or packaging to support pre-detonation identification, and 11 required such marking of the explosive substances themselves. That could involve methods such as imprinting or stencilling batch, lot or serial numbers on boxes or containers, or directly on the casings in which the explosives are actually detonated. In some cases, it might also involve the stamping or printing of markings in types of explosive that were sufficiently solid to retain the mark and resist erasure or alteration.

62. Only 10 States indicated that they also required marking to support post-detonation identification on packaging, and eight indicated that they required such marking of the explosive substance itself. Generally, marking to support post-detonation identification, also referred to in some States as tagging, involves the inclusion of threads, pellets chemicals or other extraneous material ("taggants") that will remain intact or leave residues after detonation. To be effective as a method of identification, it must be possible to vary those elements in their composition (for example, using threads of different colour combinations), in order to permit identification by comparison with a manufacturer's samples or records. Given the limited number of variations, the information encoded will usually be limited in detail, compared to the serial numbering of firearms, which can be made completely unique to each individual item, if necessary. Chemical additives or other inclusions may be varied to indicate such things as the manufacturer or specific factory that made the explosive or the batch or the approximate date on which it was made, but greater detail is unlikely in the current state of technology. Of the eight States that require tagging, members of the Group of Experts were aware of only one that had adopted specific legislative requirements to that effect, namely Switzerland. One other State, India, suggested that the Swiss requirement form one element of a possible international legal instrument.

63. There are technical problems associated with the costs involved and the effects of extraneous material on the explosive properties of the substances in which they are included, and research into better methods is ongoing in some countries. Asked about efforts to develop better marking methods, 20 of 34 States indicated that they were not engaged in such research; 12 indicated that they were conducting such research, without specifying whether it involved marking for pre- or post-detonation identification; and one State, the United States of America, specifically described research into post-detonation identification technologies. One State indicated that it was conducting research that was not available to the public. Given the wording of the question, which asked about publicly available research, it is possible that other countries are conducting research that is not being disclosed, in order to ensure that potential offenders are not given information about how to elude or avoid marking.

I. Additional issues raised by the responses of States received after the preliminary analysis

64. As indicated in the introduction to the present report, the 35 responses that were received by 10 November 2001 were compiled and sent to the members of the Group of Experts in time to permit it to consider them prior to its second meeting, which ended on 20 December 2001. By that date, an additional 15 responses had been received, and these were considered directly by the experts in finalizing the study.[21] In addition to their survey documents, Belgium provided a supplementary report listing all explosive-related incidents during the study period, and India followed its earlier response with a letter containing supplementary information.

65. The additional response of India outlined problems that India has encountered with transnational

organized crime and terrorist groups, and proposed the creation of an international legal instrument that would have broader application to terrorist activities than existing counter-terrorism instruments and the United Nations Convention against Transnational Organized Crime.

66. In its response, the Government of Belgium provided a complete list of incidents, with a brief description of each, for the entire study period.[22] That provides some insight into the types of crime in which explosives may be used, although usage may well vary from one country to another. A number of the incidents reported by Belgium appear to have been robbery or theft attempts, including the use of explosives to attack safes and automated teller or cash-dispensing machines, and a very small number appear to have been personal attacks or murder attempts. Approximately half of the explosives or devices encountered by the Belgian authorities were of a military nature, with the most common being military grenades.

67. Generally, the information provided and issues raised by the additional responses were consistent with those received earlier. Most of the respondents indicated that interior ministries or agencies responsible for law enforcement or security matters were responsible for dealing with explosives matters. Two also listed their defence ministries and one listed a ministry responsible for geology and mining. Most indicated that at least some statistical records of incidents were kept, but the majority did not make them publicly available. Incident levels among those who reported statistics were generally within the same range as for the earlier responses, with several States either not reporting data or indicating that incident levels were too low to report. Most reported that they had specific laws on explosives, including offences, licensing and other controls. Most did not require the marking of explosives. On the question whether there was a significant problem with illicit manufacturing, trafficking or use by criminals, six States expressed the opinion that a significant problem existed, five saw no significant problem, and four expressed no opinion. On the question whether such a problem, if it existed, involved significant transnational elements, three expressed concern about transnational elements, eight expressed the opinion that there was no problem or that the problem was not of a transnational nature, and four expressed no opinion. South Africa and Slovenia noted a link between transnational trafficking and the presence of explosives in post-conflict areas, which was consistent with other responses from States in their respective regions.

Notes

[1] One reason suggested in the report is that countries were unwilling to disclose information about such things as the capability and extent of explosives manufacturing or the quantities of explosives and ammunition held in stockpiles for reasons of national security.

[2] Discussion of the marking of firearms during negotiation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I, of 15 November 2000), ultimately produced agreement on such standards for firearms, with some exceptions to take account of the existing practices of countries. In discussion of explosives, however, many delegations saw marking proposals resembling those proposed for firearms as not being technically feasible (see A/AC.254/4/Add.2/Rev.3, footnote 74).

[3] The substantive text of section VII of the report (A/54/155) distinguishes between ammunition and explosives. Paragraphs 74-75, for example, discuss the head-stamping of cartridges, which applies to ammunition but not explosives. The recommendations, however, make no distinction, giving general recommendations which may apply in varying degrees to only one or both commodities. Generally, the marking of cartridges, which are made of metal and remain after the ammunition has been used, is seen as more feasible than the marking of explosives, which have neither of those characteristics.

[4] The Convention came into force on 21 June 1998 and had 71 States Parties as of December 2001.

[5] The Treaty came into force on 23 May 2001 and had 58 signatories and 45 States Parties as of December 2001.

[6] The instrument has been signed by all 31 OAS member States, and had 13 States Parties as of December 2001.

[7] The extent to which these elements must be established depends to some extent on the Convention provision that a State Party seeks to invoke. The mutual legal assistance provision applies where the requesting State Party has "reasonable grounds to believe" that the offence is transnational in nature, for example

(article 18), whereas the standard for seeking the extradition of accused offenders (article 16) is higher.

[8] While information in this area was not sought, many countries have legislation or regulations that limit or prohibit activities such as use and transport in areas of high population density, or in conjunction with particular modes of transport, notably aircraft.

[9] Preliminary data on total recorded crime per 100,000 population are available online at http://www.uncjin.org/Statistics/WCTS/trc000927.pdf. Not all of the countries that reported high incident rates for explosives are listed in the draft United Nations survey.

[10] The extent of the problem of anti-personnel mines and other unexploded ordnance is difficult to assess and most demining experts caution against direct statistical analysis due to definitional, recording and reporting problems. However, the International Committee of the Red Cross (ICRC) conservatively estimates that at least 24,000 deaths and injuries result from landmines alone each year. See "The worldwide epidemic of landmine injuries: the ICRC's health-oriented approach" (ICRC, Geneva, 1995) and "Overview 1999: Landmines must be stopped" (ICRC, Geneva, 1999) online (open the ICRC homepage (www.icrc.org) and follow the appropriate links.

[11] The incident killed 168 people, raising the annual death toll for 1995 from 25 to 193. Excluding the deaths from this single incident, the annual average for 1995-1999 was 21.0 deaths per year. Including the Oklahoma incident, the annual average rose to 54.6, or from 0.007 to 0.019 per 100,000 population

[12] This is a general description of the content only. For an accurate assessment of the principles that govern the application of the Convention, the provisions of the instrument itself should be consulted.

[13] The data compiled in table 4 of the present report combine the first two of those three categories.

[14] This category included smuggling into or out of the jurisdiction, as well as other transnational elements. See table 2 of the present report.

[15] The incidents occurred in Mumbai, India, on 12 March 1993, and therefore are not dealt with in the study, which covers only the years 1995 to 1999.

[16] The Convention only applies where an "organized criminal group" is involved. Such groups are defined by article 2, paragraph (a), as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

[17] Information was sought only about actual explosive devices, but it should be noted that hoax or imitation devices are also a significant problem in many countries.

[18] As with explosive substances, only countries which reported 55 per cent or more of the devices in one category were included as predominantly of that category.

[19] The United Kingdom also had incidents of major property damage resulting in attacks by the Irish Republican Army during the study period, but does not keep centralized statistics of incidents or the damages caused

[20] For a list of major precursor chemicals and possible access controls, see document A/54/155, paras. 100-101. The lists include several substances, notably high-concentration acids, which may have been considered sufficiently dangerous as poisonous or corrosive agents to warrant regulatory controls in some countries independently of their function as a precursor of explosives.

[21] Two further responses, from Morocco and Slovenia, were received after the conclusion of the final meeting of the Group of Experts on 20 December 2001, but prior to the submission of the present report to the Commission.

[22] The United States makes similar information available through its web sites.

Annex I

List of States that responded to the survey questionnaire

Algeria
Azerbaijan
Belgium
Bolivia
Botswana
Bulgaria
Chile
China
Colombia
Cyprus
Czech Republic
Denmark
Eritrea
Estonia
Finland
Gambia
Germany
Guatemala
Guyana
Honduras
India
Indonesia
Japan
Jordan
Kuwait
Lebanon
Lithuania
Malta
Mauritius
Mexico
Monaco
Morocco
Namibia
Netherlands
Panama
Peru
Poland
Qatar
Singapore
Slovakia
Slovenia
South Africa
Spain
Sweden
Switzerland
Syrian Arab Republic
Tunisia
Turkey
Ukraine
United Arab Emirates
United Kingdom of Great Britain and Northern Ireland
United States of America

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International cooperation in combating transnational crime

Promoting the ratification of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

Report of the Secretary-General**

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* E/CN.15/2002/1.

** The present report was not submitted within the time required by the 10-week rule because of the need to finalize plans for scheduled activities and decisions relating to future efforts to promote the ratification of the Convention and its Protocols.

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I. Introduction

1. By its resolution 55/25 of 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, and the Protocol against Smuggling of Migrants by Land, Air and Sea, supplementing the Convention (resolution 55/25, annexes I, II and III). By its resolution 55/255 of 31 May 2001, the Assembly adopted the supplementary Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (resolution 55/255, annex). In both resolutions, the Assembly urged all States and regional economic organizations to sign and ratify the instruments as soon as possible in order to ensure their speedy entry into force. In its resolution 55/25, the Assembly further encouraged Member States to begin making voluntary contributions to support the provision of technical assistance to developing countries and countries with economies in transition to assist them in their efforts to ratify and implement the instruments. In the same resolution, the Assembly requested the Secretary-General to provide the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat with the resources necessary to promote, in an effective manner, the expeditious entry into force of the Convention and the Protocols thereto.

2. In its resolution 56/120 of 19 December 2001, the General Assembly welcomed the signing of the Convention and the Protocols thereto, and expressed its appreciation for the offers of a number of Governments to host regional conferences at the ministerial level and for the financial contributions of a number of States for the purpose of holding pre-ratification seminars on facilitating the entry into force of the new instruments and their future implementation. The Assembly encouraged Member States to make adequate voluntary contributions to the United Nations Crime Prevention and Criminal Justice Fund for the provision to developing countries and countries with economies in transition of technical assistance for the implementation of the Convention and the Protocols thereto, including assistance for the preparatory measures needed for that implementation, taking into account article 30 of the Convention. In the same resolution, the Assembly requested the Secretary-General to provide the Centre with the resources necessary for the effective promotion of the entry into force of the Convention and the Protocols. The Assembly also requested the Secretary-General to report on the implementation of the resolution to the Commission on Crime Prevention and Criminal Justice at its eleventh session. The present report is submitted to the Commission in compliance with that request.

II. Promotion of signature and ratification of the Convention and the Protocols thereto

3. The Convention and the Protocols thereto have been recognized as a significant development in international criminal law and in joint international action against transnational organized crime. Their ratification and implementation by as many States as possible has been identified as a priority by the international community. Immediately following the conclusion of the High-level Political Signing Conference held in Palermo, Italy, from 12 to 15 December 2000, the Centre began developing and putting in place a strategy and a series of activities to promote the ratification of the Convention and the Protocols thereto. The unprecedented political commitment of States, expressed not only through the conclusion of the negotiations for the new instruments in record time, but also by the number of signatories to the Convention, the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol, which was the highest ever for instruments of that nature at the time of opening for signature, formed the basis for the development of the relevant activities. The ultimate objective of pre-ratification efforts was to support the speedy entry of the instruments into force, and to encourage ratification and full implementation by as many States as possible, in line with the request of the General Assembly in its resolutions 55/25 and 55/255. A key goal of the strategy and related activities of the Centre was the maintenance and further strengthening of the political momentum among States. In developing its strategy, the Centre devoted equal attention to the political and substantive components of the efforts that Governments would need to undertake in order to ratify the Convention and the Protocols.

4. Regarding the political component of the endeavour, efforts were geared towards working with Governments to encourage them to undertake the requisite legislative review and action and to proceed with the submission of the pertinent legislative proposals to the national parliaments as a matter of priority. In pursuing that approach, the Centre was cognizant of and attentive to the fact that the ultimate decision on ratification rests with national parliaments, which establish their own requirements, schedules and priorities. The Centre was, therefore, keen to ensure that its activities did not purport to influence, or in any way interfere with, the independent role and functions of national parliaments. In developing its strategy, and in particular in defining performance indicators for its activities, the Centre took into account the difficulty of estimating the time required for the completion of the last stage of the ratification process.

5. Regarding the substantive component of the effective promotion of the ratification of the new instruments, efforts concentrated on the identification of the most pressing needs of States for ratification of the Convention and the Protocols thereto. The activities focused on helping countries identify and meet their needs in new legislation or effect amendments to existing legislation, designed to bring them into basic compliance with the Convention and the Protocols, as appropriate. In designing its activities in that area, the Centre applied its experience gained from working with Governments in the past and from the views expressed and positions taken by delegations during the Convention negotiation process. The purpose was to assist States in bringing t. ?ir systems into compliance with mandatory provisions of the new instruments. That focus was determined on the premise that other obligations pertaining to the full implementation of the new instruments were to be effectively promoted by the Conference of the Parties, which would be established after the entry into force of the Convention.

6. In developing its strategy and activities, the Centre ensured that available resources were used in a targeted, efficient and effective manner, maximizing the impact of such resources and extending the reach of its activities as much as possible. That was accomplished by working in partnership with other United Nations entities, such as the United Nations International Drug Control Programme, and with other relevant international organizations that are active at the regional or subregional levels.

7. "Pre-ratification assistance" was understood as assistance in meeting the immediate and specific needs of States for undertaking the necessary steps leading to the ratification of the Convention and, as the case might be, one or more of the Protocols thereto. The main orientation of efforts was towards putting in place in each country the necessary measures to bring the legislative and other provisions or practices of that country into compliance with the instruments in order to permit their ratification by competent legislative bodies. That was deemed to be distinct from technical cooperation for the implementation of the new instruments once they have been ratified. It should be recalled that the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime completed the negotiations for the Firearms Protocol in March 2001. Thus, the Protocol had not been adopted and opened for signature at the High-level Political Signing Conference held in Palermo. After the adoption by the General Assembly of the Firearms Protocol, the format and content of activities were adjusted and the Centre directed some of the activities towards promoting the signature and ratification of the Firearms Protocol, increasing its visibility and reducing the gap between that Protocol and the other three instruments.

8. At the time of writing of the present report, there were 140 signatories to the Convention; 102 signatories to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; 98 signatories to the Protocol against the Smuggling of Migrants by Land, Sea and Air; and 26 signatories to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition. There are seven parties to the Convention and five parties to each of the first two Protocols. The Centre has received information and informal indications suggesting that several more countries have completed the ratification process but have not deposited their instruments of ratification.

III. Interregional, regional and subregional meetings

9. Work towards promoting the ratification of the instruments began with a series of subregional seminars that comprehensively reviewed the content of the instruments and allowed participants an opportunity to identify and discuss specific requirements and steps for ratification.

10. The seminars had a dual purpose, in line with the two major components of the efforts towards ratification of the instruments, which were identified above. In terms of attendance, the seminars were geared towards attracting experts with substantive responsibility for ratification efforts in competent government ministries or offices and ministers or high-level officials with political responsibility for those efforts. The seminars were structured and conducted with a view to achieving key objectives on both the substantive and political levels. First, the seminars were intended to offer the opportunity to officials with substantive responsibilities to review their national legislation, as well as to engage in and benefit from dialogue on relevant matters with officials from other countries with which they shared similar or common legal systems and traditions. Secondly, the seminars were organized to function as a forum to identify specific needs and explore options for responding to those needs. The presence of ministers or other high-level political decision makers offered the opportunity for them to be apprised of the requirements for the completion of the ratification process and to be informed about the status of the efforts of other States in their immediate vicinity. Equally, their attendance served as an occasion for them to reiterate and renew their commitment to staying the course of strengthened international cooperation on which their countries had embarked with the negotiation of the instruments. It was expected that, as critical needs and requirements were identified, efforts at the national level would shift from general consideration of the instruments towards specific legislative and regulatory action, leading to the ratification of the instruments. At the same time, it was expected that a result of the seminars would be the identification of specific areas of assistance, thus permitting the Centre to shift its activities to working with individual Governments to assist them in effecting specific legislative and other changes that they would identify as essential to their efforts to ratify one or more of the instruments expeditiously.

11. The seminars were conducted on the basis of a series of presentations developed by the Centre, with the use of a checklist of elements for ratification of the instruments. The checklist consists of an inventory of legislative requirements for basic compliance with the instruments, which each country can review against its existing laws in order to identify discrepancies and specific subjects for further consideration and action.

12. In cooperation with the Centre, the International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme prepared a questionnaire, addressed to policy makers and legislation drafters, seeking information about existing laws and possible requirements for ratification. More specifically, the questionnaire requested information from each country about the existing domestic criminal legislation dealing with organized crime. Also covered were laws regarding mutual legal assistance, extradition, other forms of international cooperation and other areas relevant to the new instruments. The questionnaire also sought to identify major issues or challenges each country is likely to encounter as it proceeds towards ratifying and implementing the various provisions. The questionnaire was tested at the interregional seminar on the ratification of the Convention and its Protocols, organized by the International Scientific and Professional Advisory Council at Courmayeur, Italy, from 13 to 16 September 2001. The Centre began distributing the questionnaire to the participants in seminars held after September 2001, in order to assist them in preparing for the seminars and for the purpose of collecting information on the status of legislation in States in connection with the ratification and implementation of the Convention and its Protocols. Also in cooperation with the Centre, the International Association of Prosecutors developed a more detailed questionnaire, addressed to practitioners, and distributed it to its membership at the general meeting of the International Association on 31 October 2001. Results from both questionnaires will be compiled for use in formulating future work and specific programmes for individual countries that request assistance.

13. In 2001, the Centre organized or participated in the following seminars and meetings on the ratification of the Convention and its Protocols:

(a) Ministers of Justice, Attorneys-General and other representatives of States members of the Southern African Development Community, including Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe, attended a Seminar held in Pretoria, from 26 to 28 March 2001, to review the instruments and consider measures needed to support them. Particular attention was directed at the provisions dealing with mutual legal assistance and extradition;

(b) Ministers of Justice and other representatives and experts from the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama attended a seminar held in Guatemala from 19 to 20 April 2001. Several other countries from the region sent observers. Participants discussed issues and reported progress towards ratification, and several indicated that they expected to be able to ratify some of the instruments by the end of 2001;

(c) Representatives of States members of the Association of South-East Asian Nations, including Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam, attended a high-level meeting of experts on the Convention and the Protocols thereto in Hanoi, from 8 to 10 August 2001. Existing legislation and ongoing efforts in the participating countries to ensure conformity with the instruments were considered;

(d) Representatives of States members of the Economic Cooperation Organization, including Afghanistan, Azerbaijan, the Islamic Republic of Iran, Kazakhstan, Kyrgyzstan, Pakistan, Turkey, Tajikistan and Uzbekistan, attended a subregional ministerial seminar in Tehran, from 3 to 4 October 2001. The seminar was organized in close cooperation with the Economic Cooperation Organization and hosted by the Government of the Islamic Republic of Iran. The meeting considered progress towards the ratification of the instruments in participating countries and relevant regional issues;

(e) In close cooperation with the Regional Office of the United Nations International Drug Control Programme in Barbados and with the invaluable involvement and generous assistance of the Commonwealth Secretariat, the Centre organized a ministerial consultation for the following States of the Caribbean: Antigua and Barbuda, Barbados, Bahamas, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Suriname and Trinidad and Tobago. The meeting was held in Port-of-Spain from 30 November to 1 December 2001. It had been preceded by an initial presentation of the Convention, the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol by a representative of the Centre at the meeting of Law Ministers of the Caribbean Community held in Guyana in January 2001 and by a signing ceremony for States members of the Caribbean Community, organized in New York on 26 September 2001. The ministerial consultation was divided into an expert segment and a ministerial segment. Using the checklist of the Centre, participants extensively analysed domestic legislation in their countries, discussed legislative and regulatory requirements for ratification and reviewed a model bill against organized crime, designed to bring domestic laws into line with the Convention, which had been prepared by the representative of Barbados;

(f) Ministers and other representatives of States members of the Economic Community of West African States, including Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea Bisseau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo, attended a subregional ministerial seminar in Ouagadougou, from 28 to 30 November 2001. An expert segment of the meeting examined the ongoing process of harmonizing national legislation with the Convention and expressed broad consensus in favour of early ratification. The ministerial segment of the meeting adopted a declaration recommending that States members of the Economic Community of West African States that had not signed the instruments do so, and urging those that had signed to ratify them.[1]

IV. Technical cooperation activities

14. The Centre undertook a number of activities at the request of Member States, focusing on specific issues relating to the ratification and implementation of the instruments in those States. They included pre-ratification activities undertaken in Croatia,[2] Monaco, Peru,[3] Romania, Saudi Arabia[4] and Slovakia.[5] Assistance in the form of documentation was also provided to Ukraine.

15. Other seminars and meetings were also conducted during 2001 to brief relevant organizations on the content of the new international legal instruments. The organizations briefed included the following:

(a) The Office of the United Nations High Commissioner for Refugees, the Office of the High Commissioner for Human Rights and the International Labour Organization (ILO) discussed ways and means of cooperating on matters relating to the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol at a meeting organized in Geneva in March 2001 by ILO;

(b) The preparatory committee for the United Nations Conference on Small Arms was briefed on the Firearms Protocol and on the implications of that instrument for its efforts against the proliferation of small arms and light weapons;

(c) The Mediterranean contact group of the Organization for Security and Cooperation in Europe (OSCE) was briefed on the Firearms Protocol and on the implications of that instrument for OSCE efforts to counter the proliferation of small arms and light weapons, and possible areas of cooperation between OSCE and the Centre were explored;

(d) The 106th Annual Conference of the Inter-Parliamentary Union, held in Ouagadougou from 9 to 16 September 2001, represented a unique opportunity for the Centre to outline to the legislative officials of many countries, in a single meeting, the legal and policy issues raised by the instruments and the legislative measures that would be needed to ratify and implement them. Following the Annual Conference, the secretariat of the Inter-Parliamentary Union offered to continue promoting the ratification of the new instruments by keeping the members of the organization informed of developments;

(e) A pre-ratification seminar was organized by the International Scientific and Professional Advisory Council at Courmayeur, Italy, from 13 to 16 September 2001. The seminar brought together representatives from approximately 30 States of all regions, including some of the States that had already ratified the Convention, the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol, offering them the opportunity to carry out a comparative analysis of their national legislation and review their respective efforts for ratification of the new instruments;

(f) The seventieth General Assembly of the International Criminal Police Organization, held in Budapest from 24 to 28 September 2001, was briefed on the Convention and the Protocols thereto.

V. Conclusions and future action

16. The series of seminars successfully launched in 2001 is scheduled to be concluded in 2002. Following subregional seminars, the Centre has planned regional seminars in Quito for the countries of the Latin America and Caribbean region, in Vilnius for the countries of Central and Eastern Europe, in Algiers for the countries of the African region and in Tokyo for the countries of the Asia and the Pacific region. Those seminars will build on the experience of the subregional meetings, completing the efforts of the Centre to cover and reach as many countries of the world as possible. The purpose of the seminars will be to review the progress achieved since the subregional seminars in the ratification efforts of Governments, further identify the needs of States, and refine the projects and materials developed to meet those needs.

17. On the basis of seminars, meetings and other activities conducted during 2001, some general needs have become apparent. Assistance appears to be needed with the formulation of the four offences established by the Convention, and, in particular, the offence of participation in an organized criminal group. That represents a new concept for many legal systems, and in some cases must be carefully drafted to ensure full compatibility with other established legal concepts, as well as the functionality and applicability of the relevant legislation. Another area in which assistance appears to be required is that of extradition. In some cases, the scope of the new instruments may require extensive revisions and amendments to extradition arrangements or legislation in some States, especially when the requirements of the new instruments are viewed in the context of jurisdictional considerations emanating from the obligation to prosecute offenders that those States do not extradite by reason of their nationality. Other areas commonly dealt with in national seminars, meetings or other activities include the provisions governing the confiscation, seizure and disposal of proceeds of crime or other property.

18. The Centre has received, and is at various stages of responding to, requests from several States,

including Belarus, Benin, Bolivia, Bosnia and Herzegovina, Chile, Guinea Bissau, Mauritius, Mongolia, Namibia, Thailand, The former Yugoslav Republic of Macedonia, Venezuela, Ukraine and Yugoslavia. Projects will be implemented in cooperation with relevant regional or other international organizations, including the Agence intergouvernementale de la Francophonie, the Commonwealth Secretariat and the Southern European Cooperation Initiative.

19. Future pre-ratification activities are expected to begin with the compilation by each State involved of a summary of relevant criminal law, including legislation and relevant case law, where applicable, and the identification of a focal point for each country. Using the questionnaire of the International Scientific and Professional Advisory Council, the list of ratification elements, the Convention and the Protocols themselves and other materials, a list of subject areas, issues and specific provisions that must be addressed in order to bring the laws of each country into conformity with the instruments will then be developed. Non-legislative requirements, such as the training of officials and the establishment or expansion of institutions will also be identified. Assistance will be provided in proceeding with the necessary changes, to the extent that such assistance is requested and that the necessary resources are available. Generally, it is expected that legislative measures would be taken first, to permit the subsequent training of officials in both the international instruments and the domestic legislation that has been created or amended to conform with them.

20. As noted previously, the Centre is in the process of collecting the replies of States to the two above-mentioned questionnaires. The Centre believes that the value of the information collected would go well beyond that of supporting and offering direction for its activities to promote ratification of the Convention and its Protocols. The information on legislative development and solutions found by countries in bringing their legal systems into compliance with the new instruments would serve as a basis for increasing knowledge on approaches taken by countries in shielding themselves against organized crime. Broader knowledge would also increase the possibilities for and the effectiveness of international cooperation, an objective that the new instrument had been devised to achieve. An analysis of the information on legislation enacted in various countries in line with the Convention and the Protocols thereto would be a useful basis for work for the Conference of the Parties to the Convention, when it is constituted. Therefore, the Centre intends to continue collecting information on legislation, and to compile and analyse such information for broad dissemination and use.

21. To support those activities, the Centre plans to establish pools of experts on which it could draw to offer assistance to requesting countries in supporting their efforts to ratify the Convention and the Protocols thereto and to incorporate the key provisions of those instruments into their national legislative and regulatory regimes. Each group will be composed of 20 to 25 experts (four or five from each region), with a view to increasing their number as the needs evolve. The pools of experts would be used to prepare specific legislative elements or model laws and develop related advice in non-legislative areas. One group would focus on issues raised by the Convention itself, while the other would focus on the Protocols, possibly with subgroups examining each Protocol or with a specific subgroup established to consider the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, which raises legal, forensic and administrative issues distinct from the other instruments. The pools of experts would also be used as a consultative body (a sort of sounding board) for the Centre in developing technical cooperation tools.

22. The extensive effort to assist as many States as possible in ratifying the Convention and the Protocols thereto would not have been possible without the generous support of several donors. The Centre intends to continue ensuring the efficient use of the resources entrusted to it and the maximization of their impact. The attainment of the common goals of the expeditious entry into force of the Convention and the Protocols and their subsequent full implementation will depend both on the continued commitment by all States to support the new instruments to the best of their individual and collective abilities and on the quality of services to be provided by the Centre.

Notes

[1] The declarations of the subregional seminars are available to the Commission as conference room papers.

[2] Seminar on fighting organized crime and corruption.

[3] Seminar on fighting organized crime and corruption.

[4] Joint legal training workshop on drugs and organized crime (organized by the United Nations International Drug Control Programme).

[5] Seminar on fighting organized crime and corruption.

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Implementation of the United Nations Declaration on Crime and Public Security

Report of the Secretary-General**

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* E/CN.15/2002/1.

** The submission of the present report was delayed because of the need to take into account recent developments, principally in the areas of transnational organized crime and terrorism.

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I. Introduction

1. In its resolution 51/60 of 12 December 1996, the General Assembly approved the United Nations Declaration on Crime and Public Security, annexed to that resolution. In its resolution 1997/34 of 21 July 1997, the Economic and Social Council welcomed the report of the Secretary-General on technical cooperation and coordination of activities (E/CN.15/1997/17) setting forth the information provided to date by Member States on their efforts to observe and implement in full Assembly resolution 51/60, and requested the Secretary-General to seek information from Member States on the implementation of that resolution, using a questionnaire or other means. In section I of its resolution 1998/21 of 28 July 1998, the Council requested the Secretary-General to prepare survey instruments on, inter alia, the United Nations Declaration on Crime and Public Security.

2. In accordance with those requests, a draft questionnaire on the use and application of the Declaration was brought to the attention of the Commission on Crime Prevention and Criminal Justice at its eighth session. In October 1999, the questionnaire, together with a note verbale, was sent to Member States, intergovernmental organizations and United Nations institutes, seeking information related to the implementation of the Declaration. At its ninth session, the Commission expressed concern about the number of documents before it and decided to defer some matters to its tenth and eleventh sessions. It recommended that consideration of the results of the survey on the Declaration be deferred until its eleventh session.[1]

3. The following 37 States sent replies to the questionnaire: Algeria, Angola, Australia, Austria, Belarus, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, Greece, Iceland, Iraq, Ireland, Japan, Jordan, Kuwait, Madagascar, Mongolia, Morocco, New Zealand, Norway, Philippines, Poland, Portugal, Qatar, Republic of Korea, Slovakia, South Africa, Swaziland, Sweden, Syrian Arab Republic, Tajikistan, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and United States of America. Several United Nations entities, as well as other intergovernmental and international organizations, acknowledged receipt of the survey questionnaire, but indicated that the questions did not apply to them or were beyond the scope of their activities. Some of those entities did furnish other information about ongoing activities that they considered to be relevant.

4. Analysis of the replies to the survey was undertaken by the Centre for International Crime Prevention of the Secretariat, in cooperation with the National Institute of Justice of the United States Department of Justice, an associated institute of the United Nations Crime Prevention and Criminal Justice Programme network. The National Institute of Justice analysis is the primary source of information for the present report.[2] Since the completion of the analysis by the National Institute of Justice, major legal developments in the areas of transnational organized crime and terrorism have occurred. References to provisions of the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I) and to the legal responses to the terrorist attacks that took place in the United States on 11 September 2001, in particular Security Council resolution 1373 (2001) of 28 September 2001, have been incorporated where appropriate.

II. Dissemination and impact of the Declaration

5. Since its adoption in 1994, the majority of the responding States have made the Declaration on Crime and Public Security available to police agencies, public prosecutors, ministries of the interior, ministries of justice, ministries of foreign affairs, immigration services, customs services and other relevant government agencies. More than half of the respondents indicated that the Declaration has made an impact on relevant laws, policies or practices in their respective countries.

6. Sixteen of the responding States reported that "public security" was not defined by legislation. Others provided legislative or non-legislative definitions in their replies. Those definitions ranged from general concepts based on matters such as citizens' subjective feelings of safety to more specific elements such as the protection of independence, sovereignty and national security, life, health, individual rights and freedoms, common and private property rights, national wealth and public order.

7. Most responding States indicated that their agencies, officials and organizations defined, supported and enforced public security through a combination of means, including legislative and regulatory measures, security measures taken by officials and public awareness campaigns. They indicated that the Declaration had been used to develop strategies, legislation and other initiatives in areas such as crime prevention, counter-terrorism, police training, the improvement of penal policy and judiciary reform, as well as in the context of efforts to combat drug trafficking, illegal migration, corruption and other problems.

8. Twenty-seven of the responding States reported that they had conducted public awareness or information campaigns about the Declaration. Many of those efforts and initiatives used the mass media and included crime prevention and awareness-raising or educational campaigns. Many used an outreach approach and were aimed at encouraging citizens to communicate with relevant agencies in order to address areas of concern.

9. Many responding States indicated that the measures being taken to ensure public security and safety involved activities at the personal and local community levels. Examples included the use of campaigns for "safe streets", "neighborhood watch" and other programmes for raising public awareness based on community initiation or participation and close relationships between the community and law enforcement at the local level. Many programmes focused on situational crime prevention and community policing initiatives. Cooperation between the police and the public in some cases also included project coordination with non-governmental organizations. Some States had appointed liaison councils to encourage more public involvement in crime prevention activities.

10. Another major security concern of the responding States related to problems of controlling or securing national borders against various forms of transnational crime, including the smuggling of illicit commodities such as narcotic drugs, firearms or other weapons, documents, cash or the proceeds of crime. A further concern was the increasing treatment of human beings as a commodity in transnational crime, such as the smuggling of illicit migrants for profit and trafficking in human beings for subsequent exploitation.

11. Since the adoption of the Declaration, many of the responding States had taken additional measures at their national borders in order to counteract such activities. Those activities included enhanced border control security and surveillance, the signature of multilateral and cooperative agreements for joint investigations, enhanced training and increased authority, and the adoption or amendment of criminal legislation establishing offences and procedures. That process was subsequently reinforced by the efforts of States to ratify and implement the United Nations Convention against Transnational Organized Crime and the protocols thereto (General Assembly resolutions 55/25, annexes I-III, and 55/255, annex), all of which called for legislative and other action relating to border security and the fight against transnational crime by organized criminal groups.[3]

12. A number of States also provided information on efforts to coordinate action and procedures between the agencies concerned with border control. In some countries, border control officials, customs offices, prosecutors and law enforcement worked cooperatively with other government offices and agencies and, in some instances, the International Criminal Police Organization (Interpol) to prevent and combat illegal border activities and interdict individuals and commodities crossing borders illegally. In some cases, those efforts included the enhancement of legal powers of relevant agencies to enable them to employ electronic or other surveillance or other special investigative measures. Specific anti-crime activities occurring at international borders included the seizure of drugs, currency and other forms of contraband, as well as the interdiction of both victims and perpetrators involved in illegal migration and trafficking in human beings.[4]

13. Table 1 sets out specific border control problems encountered in some of the responding States, as well as the measures taken in response.

Table 1
Border security

Country	*Type of incident*	*Response or other information*	*Period*
Angola	Smuggling	Smuggling across the southern border	-
Australia	Drug smuggling; illegal migration	Various drugs and other prohibited goods seized while entering the country by land, air or sea; illegal immigrants entering by air	1996-1999
Austria	Smuggling; illegal migration; and arms trafficking	Improvements in border control resulted in increased arrests for drug smuggling; illegal immigration (arrests increased from 4,562 to 13,865); smuggling of human being (arrests increased from 1,000 to 1,823); and arms trafficking	1998-1999
Bulgaria	Illegal migration	Border patrol became more efficient; more violators detained; and better statistics on applicants applying for refugee status	1999
Croatia	Illegal immigration and smuggling	Incidents included smuggling of human beings (347), drug smuggling (505), smuggling of motor vehicles (91) and counterfeiting of travel documents (154 documents seized)	1999
Czech Republic	-	Permanent expansion of border security along the border with Poland; increased personnel along the border with Germany; and intensified cooperation between border guards and the police force in border countries	-
Estonia	Illegal migration	Decreases in illegal border crossings, forged documents seized and stolen vehicles seized; and increases in illegal immigrants apprehended and persons wanted by law enforcement agencies	1996-1999
Finland	Illegal migration	Border control system provides 100 per cent checks on persons crossing the border; continuous patrolling and surveillance; increased cooperation with the border service of the Russian Federation; 3,131 refusals of entry, of which 1,500 were motivated by suspicion of crime; 114 forged documents seized; and 60 stolen vehicles seized	1999
Germany	Illegal migration and smuggling of human beings	201,069 illegal entries; 14,921 smugglers arrested; 51,221 persons smuggled; permanent expansion of border security; intensified cooperation between the border guards and the police force of border countries; use of thermal imaging systems, police dogs and police helicopters in areas requiring high border guard presence	1994-1999
Greece	Human smuggling	Decrease in border activity; most serious border crimes occur at the border with Albania	-
Ireland	Drug smuggling	Cash and illicit drugs seized at border	-
Jordan	Illegal migration and smuggling of human beings	78 smuggling cases; 55 cases involving cross-border movement	-

Country	*Type of incident*	*Response or other information*	*Period*
New Zealand	-	Increases in incidents involving amphetamine imports, overseas drug syndicates, travel document fraud and pornography via the Internet; and decreases in incidents involving cannabis smuggling and revenue fraud due to reduced tariffs	-
Poland	Illegal migration	Decreased substantially (-43 per cent); 42,993 aliens refused entry	1999
Slovakia	Drug smuggling	Largest decrease in illicit drug imports was in heroin imports; customs detected 242 criminal offences in 1998 and 213 in 1999	1998-1999
Sweden	-	Encountered 250,993 objects subject to customs control; 13,936 crimes	1999
Syrian Arab Republic	-	1,251 incidents reported by the border patrol	-
United Kingdom of Great Britain and Northern Ireland	Illegal migration	10,412 people entered the country clandestinely; and 28,320 undocumented passengers arrived by sea or air	1998
United States of America	Drug smuggling; smuggling of motor vehicles and firearms; illegal migration	Thousands of pounds of cocaine interdicted and over 9,000 migrants interdicted at sea	-

14. In order to strengthen border controls, some States have also taken measures in cooperation with other States, including regional, subregional and bilateral agreements to set border standards and prevent illegal border crossings. There are also indications of increased cooperation, both within and between countries. Law enforcement, customs and border patrol agencies are cooperating in areas such as investigation, prosecution and extradition by sharing information and by other means. Relevant regional, subregional and bilateral agreements are outlined in table 2.

Table 2
Regional, subregional and bilateral activities relating to border security

Country	*Regional, subregional and bilateral agreements*	*Problems, concerns and issues*
Australia	Sharing information for extradition; bilateral agreements with customs agencies; establishment of overseas liaison	
Bulgaria	Working cooperatively with other countries to set border standards; and maintaining intergovernmental agreements with 20 States in order to counter cross-border crime	
Estonia	Cooperation with other national and international law enforcement authorities in combating organized crime at borders	
Germany	Directives regulating the movement of firearms and explosive materials between individual member States of the European Union	

Country	*Regional, subregional and bilateral agreements*	*Problems, concerns and issues*
Iraq	Enacting regulatory and penal provisions for preventing illegal border crossings; and concluding bilateral treaties with neighbouring States	
Japan	Working collaboratively with other countries to stop illegal immigration; police working closely and exchanging information with other Asian countries	
Jordan		Problems and concerns: illegal crossing operations occurring along the border
Morocco		Problems and concerns: illegal immigrants, especially from Africa, crossing into the country through the Algerian territories in an attempt to migrate to Europe
New Zealand	Ongoing development of an international small-craft/yacht reporting system to cover the Pacific rim; development of regional intelligence initiative; posting of officers overseas to liaise with counterparts; bilateral cooperative agreements with overseas law enforcement agencies	Issues: pornography, privacy legislation, inter-agency rivalries, differing priorities between countries
Norway	Implementation of the Schengen Convention[a] and participation in other regional police and border control initiatives	
Poland	Participation in the Task Force on Organised Crime in the Baltic Sea Region	
Slovakia	Border service and cooperative relationship with Hungary and Ukraine; collaborative relationship with border patrol, customs and police	
Tajikistan	Setting of additional border posts and concluding inter-State agreements with Kyrgyzstan and Uzbekistan on the strengthening of measures to prevent the smuggling of strategically important raw materials, to prevent drug trafficking etc.	

[a] Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of States of the Beneleux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990.

15. Most responding States also indicated that they used enhanced technologies to protect the integrity of travel documents such as passports, including measures to detect and prevent counterfeiting, falsification and tampering, and enhanced legal measures to prosecute counterfeiting. Communication and other technological measures may also be used to check the validity of documents used by travellers. Such measures were supported by increased training efforts and enhanced communication links between agencies. The focus of such measures was on travel documents, but in some cases the measures might be applicable to other documents, such as shipping documents or import or export permits or licences. Table 3 shows examples of those measures taken by responding States.

Table 3
Technological measures employed with respect to travel or other documents

Country	*Measures employed*
Australia	Technology is used to prevent tampering. Communication linkages have been established for identification or verification purposes.
Bulgaria	Border checkpoints use state-of-the-art technology to verify the authenticity of documents.
Czech Republic	An electronic registration system is in use.
Estonia	The board of border guards established a Travel Documents Evaluation Centre in 1999. All border posts are equipped with the necessary passport control equipment.
Finland	The following were introduced: new passports with high security standards, secure identity cards and optical variable device visas and residence permits.
Germany	In 1996, a special unit for the prevention of the tampering, falsification and counterfeiting of documents was set up at the Federal Office of Criminal Investigation.
Iceland	Enhanced technology was used to detect and reduce the counterfeiting of passports. Training was provided in the detection of counterfeit documents.
Iraq	A law on passports was enacted and the relevant penal provisions were incorporated into the Penal Code.
Japan	Machine-readable passports with anti-forgery features were introduced.
Jordan	Ultraviolet hardware was used at some border checkpoints, especially at airports, to detect falsifications.
Morocco	Control action is undertaken at border and other points. Persons involved in offences are prosecuted and brought to justice.
New Zealand	Passport document and systems (i.e. electronically read passports) have been improved.
Norway	Passports and visa stickers are produced in a way to make falsification as difficult as possible.
Philippines	The Department of Foreign Affairs has established the Office of Passport Falsification and Irregularities to handle cases involving counterfeiting.
Poland	Basic examination tools are used at border control checkpoints.
Qatar	In 1999, a machine-readable passport was issued that contains high-performance security features. For example, the details and photograph of the passport bearer are printed by an automated process on an adhesive plastic cover.
Republic of Korea	The illegal alteration, falsification and counterfeiting of travel and transit documents are punishable as crimes of forgery under the Criminal Code.
United Kingdom of Great Britain and Northern Ireland	The Immigration Service National Forgery Section trains all immigration service staff in forgery detection techniques. The Immigration Act and the Forgery and Counterfeiting Act permits prosecution of those holding forged travel documents.
United States of America	Technology has been used to improve the inspection of travel documents. International information exchange is used to detect counterfeiting and forged documents.

16. Most of the responding States required additional scrutiny with respect to items or commodities seen as significant in public security terms. Those requirements included import and export permits or licences, often linked to conditions of issuance such as the keeping of transaction records, the declaration of and limitations with respect to "end-users" or final destinations, and requirements for safety and security in transit. In some cases, controls on transnational transactions were closely linked to controls on

domestic activities such as acquisition, possession, sale or use. Sensitive items or commodities that commonly attracted import and export controls included firearms and other weapons or munitions, explosives and exceptionally dangerous biological, chemical or nuclear materials. In some cases, restrictions also applied to parts, components, precursors or constituent elements for such commodities and/or tools, equipment or apparatus needed to produce them, where those were of a sufficiently specialized nature.[5] Restrictions on traditional weapons and related technologies were more commonly reported than those on chemical or biological materials.

III. Initiatives to combat serious forms of transnational crime, including terrorism

17. Article 1 of the Declaration lists a number of particularly serious types of transnational crime, against which Member States are urged to take effective national measures: organized crime, illicit drug and arms trafficking, smuggling of other illicit articles, organized trafficking in persons, terrorist crimes, and the laundering of proceeds from serious crimes. Most States that sent replies to the questionnaire reported that they had taken such measures. Many indicated that they had adopted definitions and offences specific to organized criminal activity, applicable where two or more individuals planned or carried out a criminal act.[6] In addition to reporting on offences specified in article 1, many responding States also reported on laws criminalizing the following conduct when it involved elements of transnational and organized crime: smuggling of people for purposes other than trafficking, prostitution, money-laundering, counterfeiting, child pornography, value-added tax fraud, computer-related crime, various forms of financial crime, and intellectual property and industrial theft.

18. Sixteen of the responding States indicated the existence of various penal codes and laws specific to the participation in the commission of various forms of serious transnational crime. Some specific provisions included offences relating to sedition, terrorism, national security offences, sexual offences, racketeering, illegal financial transactions and influencing or assisting in such crime. In more than half of the responding States, national laws contained specific provisions governing participation in an organized criminal group or entity. Most States had criminal offences relating to affiliation with gangs or organized criminal groups or participation in the activities of such groups. In many cases, laws prohibited participation but not mere membership, possibly owing to legislative or constitutional constraints imposed by protection relating to "freedom of association". In some cases, legislation also provided for aggravated sentences or mandatory minimum sentences for those convicted of such acts. After the survey was conducted, the United Nations Convention against Transnational Organized Crime was adopted, obligating parties to the Convention to criminalize participation in the activities of an "organized criminal group" (General Assembly resolution 55/25, annex I, article 5). The progress made by States in their efforts to ratify the Convention and its protocols is described in document E/CN.15/2002/10.

19. Most of the responding States also indicated that they had adopted legal measures in response to specific crime problems that were likely to be transnational in nature. Crimes such as money-laundering, trafficking in human beings, drug trafficking and some forms of sexual crime were generally dealt with by measures that included specific offences, investigative powers and evidentiary rules. Some States also reported on recent or pending amendments in those areas.

20. Some States had also adopted specific legislation to deal with terrorism. That legislation included definitions applicable to terrorist groups or terrorist crimes or action that tended to focus on the use of violence or criminal acts. Such acts were linked to the immediate goal of causing death, injury and/or the intimidation of a population and to the underlying purpose or objective of generating political, social or similar pressure or causing harm to national security. Other States had not sought to criminalize terrorist activities or groups, per se, preferring instead to address the problem from within existing criminal and penal frameworks. To enhance deterrence, for example, a crime committed for terrorist purposes might attract a harsher sentence than the same crime committed for other purposes. In addition to criminal offences, some States had also adopted specific investigative powers or procedural measures for cases related to terrorism.

21. The terrorist attacks that took place in the United States on 11 September 2001 led to further action by the international community and many Member States. Prior to the attacks, the General Assembly, in its resolution 51/210 of 17 December 1996, had established an ad hoc committee to elaborate an international convention for the suppression of terrorist bombings and, in its resolution 54/110 of 9 December 1999, decided that the ad hoc committee should address means of further developing a comprehensive legal framework of conventions dealing with international terrorism, including considering the elaboration of a comprehensive convention on international terrorism. The ad hoc committee, having previously concluded its work in respect of the International Convention for the Suppression of Terrorist Bombings (Assembly resolution 52/164, annex), resumed its work on a possible comprehensive convention with renewed vigour following the attacks. In its resolution 56/123 of 19 December 2001, the Assembly reaffirmed the role of the Centre for International Crime Prevention in providing to Member States, upon request, technical cooperation, advisory services and other forms of assistance in the field of crime prevention and criminal justice, including in the areas of prevention and control of transnational organized crime and terrorism.

22. In its resolution 1368 (2001) of 12 September 2001, the Security Council unequivocally condemned in the strongest terms the terrorist attacks of 11 September 2001. In its resolution 1373 (2001), the Security Council established a series of legal requirements applicable to all Member States to take action with respect to preventing the funding or financing of terrorist acts, preventing the commission of terrorist acts, denying safe haven and the use of their territories to those involved in such acts, establishing as serious criminal offences the financing, planning, preparation and perpetration of terrorist acts, and preventing the movement of terrorists or terrorist groups by effective border controls and controls on the issuance and validation of identity papers and travel documents. Following the adoption of Security Council resolution 1373 (2001), many States have enhanced legislative and other measures to take effective action against terrorism.

23. At its intersessional meeting held on 14 January 2002, the Commission requested that the Secretary-General report to it at its eleventh session on progress made in strengthening international cooperation in combating terrorism. More detailed information about this issue will be dealt with in the report of the Executive Director on the work of the Centre for International Crime Prevention (E/CN.15/2002/2).

IV. International cooperation in criminal matters

A. Mutual legal assistance in criminal matters

24. Almost all of the States that provided replies concerning mutual legal assistance indicated that such assistance was rendered on a legal basis. Most cited the dual basis of international legal instruments governing the obligation to assist other States and the processes for making requests and rendering assistance, as well as domestic laws governing the taking of action necessary to render such assistance, such as the search for and seizure of evidence requested by another State. Three States indicated that they rendered such assistance based only on domestic law, and nine cited only treaties as the basis for rendering such assistance.

25. A common limit on the rendering of such assistance was the requirement of dual criminality, under which one State will only assist another State if the request relates only to a crime or crimes specified by the requesting State which are also crimes in the requested State. In responding to requests, 23 States reported that they required dual criminality when rendering assistance in any form which required coercive measures such as arrest, search or seizure. Only 13 of those States extended the same dual criminality requirements to legal assistance requests which could be responded to without such measures. Ten States also raised the possibility of alternative means of rendering assistance that might not require dual criminality. States Parties to the United Nations Convention against Transnational Organized Crime may refuse assistance based on the absence of dual criminality, but such assistance is not precluded and may be provided without dual criminality at the discretion of the requested State Party involved (General Assembly resolution 55/25, annex I, art. 18, para. 9).

26. For most of the responding States, legislation or other arrangements did not require withholding mutual legal assistance on grounds of bank secrecy. For those which have become States Parties to the United Nations Convention against Transnational Organized Crime, bank secrecy is expressly excluded as a basis on which assistance can be refused (General Assembly resolution 55/25, annex I, art. 18, para. 8). Information or evidence that is sensitive for other reasons may be delayed, withheld or provided subject to limitations on its use in some cases. Most of the States which responded also indicated that they required assurances that assistance, once rendered, would not be transmitted to other States or used in proceedings other than those for which it was requested. One common limit was the delay in transmission or requiring of assurances in respect of evidence in cases where disclosure might prejudice an ongoing criminal investigation in the requested State. The United Nations Convention against Transnational Organized Crime permits delay where needed to protect ongoing investigations or proceedings and limits the use, disclosure and further transmission of evidence without the consent of the State Party which provided it (Assembly resolution 55/25, annex I, art. 18, paras. 19 and 25).

27. Most responding States indicated that they had legislation or other arrangements that permitted the transfer of a person in custody to another State for the purpose of providing testimony or other assistance in investigations or criminal proceedings. In such cases, transfer was usually made contingent on undertakings that the transferred person would be kept in adequate custody and would be returned without the need for extradition or other proceedings.

28. Recent developments in telecommunications technology have removed most of the technical obstacles to providing testimony before a legal tribunal, both viva voce and by means of audio and video recording. In criminal proceedings there is a strong preference for live video-link evidence of sufficient quality to permit accused persons to confront witnesses and to permit adequate cross-examination. Sixteen of the responding States indicated that they had adopted legislation permitting testimony and similar evidence provided via video link or other modern means of communication to be used in criminal proceedings, provided that minimum conditions were met. Most preferred live testimony, limiting video evidence to cases where it was justifiable on the basis of geographical distance, physical limitations of the witness, the protection of the witness or some combination of those factors. Apart from logistical and technical concerns on the part of developing countries, the other major constraint on the use of audio- or video-link evidence was the difficulty of applying legal sanctions to the witness for perjury or failure to cooperate with the tribunal. Ten of the 18 responding States had extended their domestic perjury offences to include witnesses testifying in a domestic tribunal from abroad.

29. To expedite the reception of and response to legal assistance requests, most of the responding States indicated that they had designated a central authority to receive requests, to refer them to the appropriate domestic agency for response and to review the evidence or other assistance generated before transmitting it back to the requesting State. Twenty-eight States reported that they had concluded bilateral or international agreements or arrangements with other States to facilitate the detection, apprehension and prosecution of persons who had committed or had been otherwise responsible for serious transnational crimes.

30. Twenty States provided information about the volume of requests for mutual legal assistance received between 1996 and 1998. The major reasons for refusing requests included: the absence of reciprocal assistance; the absence of dual criminality; bank secrecy; possible prejudice to sovereignty, security, public order or other essential public interests; the political or military nature of the offence involved in the request; discriminatory nature of the request; incompatibility with an ongoing investigation or prosecution; inconsistency of the measures requested with national legislation and practice; the right of the subject not to be prosecuted again for an offence for which he or she had previously been acquitted or convicted; and the lack of an applicable treaty or agreement. Requests also sometimes foundered on non-legal grounds, the most common being the failure of the requesting State to provide adequate documents or evidence in support of its request and difficulties arising from the translation of documents.

31. Twenty-one of 27 responding States indicated that they permitted law enforcement agencies or other relevant authorities to receive and respond directly to requests for assistance in some circumstances. In some cases, that was done pursuant to the provisions of

bilateral, multilateral or regional agreements or arrangements. In other cases, informal assistance was given between the individuals or agencies involved without legal requirements. Most of the responding States indicated that they allowed agencies to share information directly where certain conditions were met. Those conditions included the existence of an applicable international agreement, transmission via a recognized channel (such as Interpol or the European Police Office (Europol)), and limits on the use of information (for example, for investigative or intelligence purposes and not evidentiary purposes). A common concern was the potential that shared information might be further transmitted or disclosed by the receiving State. Almost all of the 28 States that responded on this point indicated that when requesting information they could offer assurances that the information would not be transmitted or used for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested State. In some cases absolute guarantees of non-disclosure might be impossible because of obligations on the part of the State given the information to make full disclosure to the accused in criminal cases. The United Nations Convention against Transnational Organized Crime requires the State that must disclose shared information to notify the State that shared it before the disclosure or, if that is not possible, without delay afterwards (General Assembly resolution 55/25, annex I, art. 18, para. 19).

B. Extradition

32. Extradition treaties vary in their nature and scope. Some are bilateral, while others have multiple States parties. Some are of a general nature, while others are embedded within treaties that are more specific and focused in their subject-matter and scope of application. Such treaties commonly provide for extradition only in cases linked in some way to transnational organized crime, trafficking in narcotic drugs or terrorist bombing, for example. Most responding States indicated that they were parties to one or more such treaties, and some had signed bilateral treaties with many other States. States that had signed such treaties did not necessarily make extradition conditional on the existence or applicability of such a treaty, however. Over one half (16 of 26) of the responding States indicated that extradition for offences not covered by a treaty or to States where no treaty existed might be permitted on a discretionary basis, subject to applicable domestic constitutional or legal constraints. Twenty-four of the 27 responding States reported that they had domestic legislation specifically governing extradition matters.

33. One major constraint on extradition is the principle—which is a constitutional requirement in some countries—that a country's own nationals cannot be extradited to face foreign criminal proceedings. In some countries, nationals may be extradited, but only subject to additional conditions not applied to others. Only 14 of the 28 responding States indicated that their laws allowed for the extradition of their nationals under certain conditions. Conditions differed greatly among the 10 States that offered such information and were subject to relevant treaties or agreements. Below are examples of information received from States regarding the extradition of their nationals. The majority of States in which extradition of nationals was not permitted did not have legislation providing for the conditional extradition or temporary transfer or surrender of a national on the condition that he or she be promptly returned after trial to the extraditing country's territory. Table 4 illustrates some of the conditions that were placed on extradition.

Table 4
Legal conditions or limits on extradition

Country	*Conditions for extradition*
Angola	Extradition is possible only by arrangement between Governments.
Estonia	No special conditions exist.
Finland	Extradition is possible only to another member State of the European Union for a crime that would yield the most severe punishment of four years imprisonment if committed under Finnish law in Finland; no Finnish national may be re-extradited to another State.
Ireland	Extradition is possible only where there is a reciprocal agreement.
Japan	Extradition is possible only where there is an extradition treaty with the requesting State and that treaty has a provision to allow the extradition of nationals.
New Zealand	Extradition is subject to whether the relevant treaty, Order in Council, undertaking or arrangement specifically allows or precludes the surrender of citizens of New Zealand.
Norway	Extradition is possible under certain conditions to the Nordic countries only.
Swaziland	Extradition is possible where the offence of which the person is accused or convicted is not of a political character.
United Kingdom of Great Britain and Northern Ireland	There are no conditions for the extradition of nationals. Nationals are dealt with in the same manner as non-nationals.
United States of America	Extradition is possible pursuant to bilateral agreements with individual countries.

34. One response to the inability of States to surrender their own nationals for extradition is the principle "extradite or prosecute" (aut dedere aut judicare), under which a State that does not extradite an offender by reason of his or her nationality is required to prosecute the case in a domestic court, or at a minimum, make due efforts to do so. This principle is codified in the extradition provisions of a number of international legal instruments.[7] This requires States which cannot extradite their nationals to ensure that their own courts have jurisdiction, and 16 of the States that responded to the survey indicated that their laws provided for obligatory or discretionary jurisdiction in such cases. Preconditions for such jurisdiction varied in accordance with general factors such as national criminal legislation, applicable treaties and case-specific factors such as the nature of the crime and the admissibility of evidence.

35. Extradite or prosecute requirements may also not be met because, despite due efforts to complete investigations and bring cases to trial, an adequate case could not be assembled. Foreign witnesses may not be available, for example, or other evidence may be insufficient or inadmissible. Ten of the 18 responding States reported that, having refused extradition, they had subsequently prosecuted their own nationals on the grounds of aut dedere aut judicare from 1996 to 1998.

36. As with mutual legal assistance (see para. 29 above) central authorities are usually established to receive and consider extradition requests. Such authorities serve as a point of contact between Governments, assessing incoming requests in order to refer them to the appropriate domestic agencies for follow-up or to draw the attention of a requesting State to any problems or insufficiencies in order for them to be dealt with. The majority of the responding States had designated a central authority with the responsibility and power to execute requests for extradition or to transmit them to the competent authorities for execution. Generally, those authorities were associated with ministries or departments responsible for foreign affairs, justice or public prosecutions.

37. The initial stage of extradition proceedings is usually a request that the responding State provisionally arrest the subject and make any necessary custodial or other arrangements to ensure that he or she will not flee to avoid extradition. In some countries, such requests must be made via appropriate diplomatic channels and central authorities, while others allowed for less formal requests, pending further proceedings. Sixteen of the responding States reported an annual average of 50-60 arrest requests per year through diplomatic channels between 1996 and 1998. A further 15 responding States reported an average of 8-9 requests per year. Twenty-three of the 28 responding States also allowed law enforcement agencies or other relevant authorities to receive and execute requests for provisional arrest directly from other States or through intergovernmental organizations such as Interpol under certain conditions, including those provided for in bilateral, multilateral or regional agreements or arrangements.

38. Reasons for not executing requests for provisional arrest included: inability to locate the subject; failure of the request to satisfy legislative or constitutional conditions of the requested State; lack of information sufficient to determine whether the request met applicable requirements; withdrawal of the request; absence of dual criminality; and lack of a treaty or national laws applicable to the requesting State. Where States permitted direct requests for provisional arrest, additional conditions were usually applied. The principal conditions in such cases were dual criminality requirements, the issuance of a judicial order and the non-prescription of criminal acts. During the survey period, the proportion of cases in which provisional arrest was sought or obtained directly appeared to decrease. The overall number of cases in which provisional arrest was sought through diplomatic channels remained relatively unchanged.

39. The overall number of requests for extradition made through diplomatic channels appears to have decreased slightly during the survey period, as did the number of requests that actually concluded with extradition. Common reasons for refusing extradition included: absence of assurance of reciprocity; lack of dual criminality; lack of an applicable extradition treaty; inability of the requested State to extradite one of its nationals; unwillingness or inability to extradite due to the possible application of capital punishment; refusal because the offence in question was of a political nature; lack of sufficient evidence; the fact that the subject had already been convicted or acquitted of the same offence; and the fact that the offence involved was not an extraditable offence under applicable laws or treaties.[8]

V. Law enforcement training and education

40. Twenty-five of the 33 responding States indicated that they had recently organized or hosted international law enforcement training and education activities dealing with measures against serious transnational crime. The activities described included the provision of courses on organized crime, border security or law enforcement issues, drug trafficking, illegal migration issues, corruption issues, witness protection, domestic or transnational firearms control or firearms trafficking issues, linkages between drug- and terrorism-related crime, and money-laundering. In some cases specific activities formed elements of broader programmes in areas such as white-collar crime, drug law enforcement, money-laundering, multidisciplinary co-operation, juvenile delinquency, organized crime, border protection, criminal intelligence programmes and forensic science programmes. Specific initiatives included those arranged on a bilateral or regional basis by Governments or training institutions, as well as those of intergovernmental organizations such as Interpol.

41. Technical assistance programmes in general were less common. Fewer than one half of the responding States indicating that they had recently provided such assistance and about one half indicating that they had received it. The assistance in question included the provision of equipment, the provision of institutional assistance, the transfer or sharing of expertise and the furnishing of both general and case-specific information. The equipment provided ranged from trained dogs to ships, and the expertise provided included training in police management, prosecution skills and forensic sciences. Institutional assistance included the establishment or overhauling of key institutions and the provision of assistance with legislation. Expertise and institutional assistance included the secondment of skilled personnel and the conducting of training exercises in the requesting State and sending personnel for training. In some cases assistance was limited to

simply furnishing information, training or reference manuals or similar materials.

VI. Status of adherence to the principal treaties relating to various aspects of international terrorism and international drug control

42. About one half of the responding States indicated that they had implemented the two major existing international treaties and the General Assembly resolutions on terrorism that were in effect at the time of the survey.[9] This development has largely been superseded by events following the terrorist attacks of 11 September 2001. Since then, many additional countries have ratified and implemented the two instruments, and all Member States have become subject to the requirements of Security Council resolution 1373 (2001).

VII. Victim and witness assistance programmes

43. Of the 31 responding States, 17 appeared to have procedures or programmes to protect witnesses in cases where participating in criminal proceedings could put witnesses in danger. Such combined legislative or regulatory powers are generally supported by administrative procedures and programmes. Cases involving transnational crime tended to be subsumed within broader laws and policies intended to protect witnesses in all criminal cases. Most of those procedures and programmes included relocation and the creation of a new identity. Almost half of the responding States had also established evidentiary rules allowing testimony to be given in a manner that ensured the safety of witnesses. The United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which were adopted after the survey was conducted, contain specific provisions for providing assistance to and protecting both victims and witnesses (General Assembly resolution 55/25, annex I, arts. 24 and 25, and annex II, art. 6).

44. Protecting witnesses in cases involving transnational crime raises further issues, including the need for cooperation and the question of which of the States involved will bear any costs involved. Fewer than half of the 27 States that provided replies reported having legislation that provided for arrangements with other States for witness relocation and protection. Such legislation usually required the State requesting the witness's participation to pay such expenses as travel and protection costs. In some countries, similar principles were simply set out in the applicable treaties and not necessarily in domestic law. Some responding States did not appear to have established any rules dealing with such matters on an ad hoc basis.

VIII. Proceeds of serious transnational crime

45. More than half of the 30 States that provided information on money-laundering issues indicated that their legislation included measures against laundering the proceeds of serious crime. In almost every case, a central element of such legislation was a criminal offence of money-laundering, which criminalized activities such as transactions or transfers intended to conceal or alter the nature of proceeds in order to conceal their origin or to defeat efforts to trace and seize the assets involved. Most States also had lists of specific crimes, or "predicate offences", to which such measures applied, including smuggling and trafficking offences involving drugs, illicit arms and other commodities and, in some cases, trafficking in human beings. Offences to which such measures applied tended either to be sufficiently serious to warrant financial controls (for example, terrorist offences) or to generate proceeds substantial enough that the potential for seizure and forfeiture was seen as an effective deterrence and control measure (for example, drug trafficking offences). Other States had adopted a more general approach, simply applying the money-laundering provisions to any criminal offence seen as sufficiently serious to justify the attachment of additional criminal liability or warrant the administrative and law enforcement effort involved. That could be based on national categories, such as felony/misdemeanour or summary/indictable offences, or on standards such as the harshness of the maximum punishment applied. The latter approach was also taken in the United Nations Convention against

Transnational Organized Crime, which requires States Parties to criminalize conduct relating to the laundering of the proceeds of predicate offences specifically established by the Convention and any other "serious crime", defined as an offence punishable by a maximum deprivation of liberty of at least four years (General Assembly resolution 55/25, annex I, art. 2, para. (b), and art. 6).

46. The question of bank secrecy is seen as critical in money-laundering cases. Of the 27 States that replied on that issue, 20 indicated that they provided for some limitation or lifting of bank secrecy where doing so could be adequately justified as part of a criminal investigation. The justification required varied from country to country. In some countries bank secrecy could be lifted in all criminal cases, while in others it could only be done in cases involving predicate offences for money-laundering or specific categories of offences such as drug trafficking. Some States indicated that they had also established specific provisions excusing banks from civil liability to customers where bank information was disclosed to investigators. The United Nations Convention against Transnational Organized Crime requires States Parties to lift bank secrecy whenever there is a mutual legal assistance request in any case to which the Convention itself applies.

47. Record-keeping and transparency were also seen as important elements of programmes against money-laundering; 23 of the 31 States that responded on this point indicated that they had legislative rules requiring financial and related institutions to make clear and complete records of accounts and transactions. A total of 25 States indicated that their legislation allowed law enforcement authorities to use such records in criminal investigations and prosecutions, as well as in regulatory or administrative investigations and proceedings when necessary. Some States sought to maintain confidentiality by barring disclosure other than in the proceedings for which the records were obtained. Many of the responding States had legislation that required financial and related institutions to report suspicious or unusual transactions to the appropriate authorities. Fourteen States provided the total number of such transactions reported for 1996, 1997 and 1998; the average was 22,456 reported transactions per country.

48. States also reported a number of other measures taken to prevent or combat money-laundering and related activities. Most required their banks and financial institutions to report suspicious transactions or other activities, and 16 included cross-border transfers of cash or negotiable instruments. Many had also established frameworks for cooperation between institutions and programmes for training employees. A total of 22 States reported the establishment of financial intelligence units to serve as national centres for the collection, analysis and dissemination of information regarding potential money-laundering and other forms of financial crime. As with mutual legal assistance and other forms of international cooperation, some rendering of assistance was done pursuant to formal memorandums or agreements, while in other cases less formal cooperation occurred. Some States indicated that they allowed informal cooperation between financial institutions, but only where the institutions were roughly equivalent and thus subject to the same obligations regarding confidentiality.

49. The establishment of powers to confiscate proceeds of crime was seen as critical to most policies against money-laundering, which sought to deprive offenders of financial incentives to commit crimes and the subsequent use of any gains should a crime succeed. Almost all 30 of the responding States reported that their laws and procedures allowed for the confiscation of proceeds. Specific provisions were supported by measures to facilitate the tracing, identification, seizure and confiscation of proceeds and were made subject to procedural safeguards to ensure that funds or other assets targeted by such measures were, in fact, proceeds of crime or derived in some way from such proceeds. Some described a two-stage process, involving safeguards both at the stages of initial seizure or freezing of assets, and more substantial requirements prior to any final forfeiture.

50. More than one half of the States that responded had laws allowing the execution of confiscation-related requests for mutual legal assistance from other States. In most cases, the requirements for such assistance included the basic requirements for all forms of mutual assistance, with additional elements specific to the nature of a confiscation-related request. At the time of the survey, such cases appear to have been rare: only 6 of the 20 responding States indicated that they had received requests for mutual legal assistance for identification, freezing or seizure of property in the last

several years, and only four of those States had executed such requests. During the same period, only eight States indicated that they had received confiscation requests and only six of those States had actually executed such requests. One possible explanation for this is that the high costs and complexities of such cases dissuaded authorities except where the proceeds were substantial. Another is that, while most countries' legislative schemes provide for legal assistance in tracing, seizing and forfeiting proceeds, not all provide for the return of such proceeds in the event that they are successfully recovered. Some States had established reciprocal arrangements or signed memorandums with others to provide a basis for the sharing and return of recovered proceeds.

51. The United Nations Convention against Transnational Organized Crime also imposes requirements on States Parties to take measures against money-laundering, including customer identification, record-keeping and the reporting of suspicious transactions, and encourages consideration of further measures against transnational money-laundering (General Assembly resolution 55/25, annex I, art. 7). It also contains provisions governing the confiscation, seizure and disposal of proceeds of crimes, as well as property, equipment or other instrumentalities used in or destined for use in crimes to which the Convention applies. These supplement the Convention's more general rules for mutual legal assistance and provide for confiscation, seizure and international cooperation in matters such as identification, tracing, freezing and seizing proceeds. Provision is also made for the disposal of proceeds, but this is not mandatory for States Parties to the Convention, which are required to consider priority use of recovered proceeds to compensate victims and are encouraged to consider the sharing of such funds with other States Parties or their use for combating transnational organized crime (Assembly resolution 55/25, annex I, arts. 12-14).

52. Since the survey was conducted, concern about the laundering of the proceeds of serious corruption offences has emerged as a major concern in view of the substantial proceeds involved in such cases and the complex international issues raised by efforts to trace and recover them. This has led to pressure to include corruption-related conduct within the scope of criminal offences to which national laws against money-laundering apply and to deal with issues related to asset recovery as part of the draft United Nations Convention against Corruption.[10]

IX. Bribery and other forms of corruption

53. Most of the responding States reported that they had adopted legislation to combat and prohibit bribery and other forms of corruption and bribery, although such measures were still pending in some countries. In many cases, measures which had been taken were linked to international instruments, a process that was likely to continue as the negotiation of the draft United Nations Convention against Corruption proceeded. Specific measures included both criminal offences covering conduct such as bribery and more proactive measures such as codes of ethics to discourage corruption and transparency requirements to deter misconduct and make it easier to detect. Some of those measures had been introduced pursuant to the International Code of Conduct for Public Officials (General Assembly resolution 51/59, annex) and the United Nations Declaration against Bribery and Corruption in International Commercial Transactions (Assembly resolution 51/191, annex). Some examples of those national measures are set out in table 5.

Table 5
Measures against bribery and other forms of corruption

Country	*Legislation*
Algeria	Property disclosure laws
Czech Republic	Criminal code amended in 1999 to conform with the Council of Europe's Criminal Law Convention on Corruption
Ireland	Ethics in Management

Country	*Legislation*
Morocco	Supreme Court of Justice Act, chapter 33, amended by finance law (January 1991)
Philippines	Enactment of the Anti-graft and Corrupt Practices Act for Government Personnel
South Africa	Legislation that criminalizes corruption by both the corruptor and the corruptee (that is, both active and passive corruption)
Sweden	Implementation of Organisation for Economic Cooperation and Development and European Union instruments on corruption

54. Non-legislative efforts reported in the survey were more common, being mentioned by about three quarters of the responding States. Examples of such measures are listed in table 6.

Table 6
Other measures against corruption

Country	*Measures taken*
Bulgaria	A government programme on reform in the public administration and the judiciary; and a programme on the activities of the Ministry of the Interior for prevention and detection of crimes committed by officials with mercenary motives and for the prevention of corruption among its officials
Czech Republic	Adoption by the Government of the Government Programme for Fighting Corruption in February 1999
Estonia	Training programmes for policemen to study investigative measures of corruptive bribery and organized crimes; participation in Octopus I activities
Jordan	Setting up of an anti-corruption department; penal code provisions for penalties
Tajikistan	Decree of the President "On Strengthening of Measures to Combat Corruption"
United Kingdom of Great Britain and Northern Ireland	Signing by the Government of the Council of the European Union's joint action of 22 December 1998 on corruption in the private sector and the Council of Europe's Criminal Law Convention on Corruption

X. Concluding remarks

55. A number of significant developments have occurred in relation to crime and public security since the period covered by the survey. In the area of transnational organized crime, many of the same issues and concerns raised in the United Nations Declaration on Crime and Public Security led the General Assembly to adopt its resolution 53/111 of 9 December 1998, calling for the elaboration of a Convention against transnational organized crime. Those concerns have since been dealt with by the subsequent negotiation and adoption of the United Nations Convention against Transnational Organized Crime and its three protocols. During the same period, the Global Programme against Money-Laundering continued its operations, and within the Centre for International Crime Prevention, two further Global Programmes were established to deal with specific issues related to organized crime (see below). As the process of ratification and implementation of the four legal instruments against transnational organized crime proceeds, significant changes can be expected in many countries in respect of the fight against organized crime, as well as in other areas affected by the instruments, in particular extradition, mutual legal assistance, corruption and money-laundering and the subject areas covered by the protocols. During 2001, this process was already under way as countries began to develop the legislative and administrative elements

needed to bring national structures into conformity with those legal instruments.

56. With respect to the fight against terrorism, the nature and scope of national and international efforts was significantly altered by the terrorist attacks of 11 September 2001 and the reactions to those attacks. Efforts to negotiate a comprehensive international instrument against terrorism continue, and a series of legal obligations to take immediate action in a number of areas were created by the Security Council in its resolution 1373 (2001). Countries are now engaged in efforts to implement that resolution, including by the ratification and implementation of the international instruments dealing with terrorism and related matters.

57. The fight against corruption has also expanded since the survey period, with the decision of the international community to proceed with the negotiation of a comprehensive international legal instrument, to be known as the United Nations Convention against Corruption, pursuant to General Assembly resolutions 55/61 of 4 December 2000 and 56/260 of 31 January 2002. Recognizing the seriousness of this problem, the Assembly called for the completion of the Convention by the end of 2003.

58. These issues were also considered by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna from 10 to 17 April 2000. In the "Vienna Declaration on Crime and Criminal Justice: Meeting the Challenges of the Twenty-first Century",[11] the Tenth Congress called for action in all of these areas. In its resolution 55/60 of 4 December 2000, the General Assembly requested the Secretary-General to prepare, in consultation with Member States, draft plans of action to include specific measures for the implementation and follow-up to the commitments undertaken in the Vienna Declaration. At its tenth session, the Commission adopted a set of plans of action calling for a range of national and international actions, including: action against transnational organized crime; action against corruption; action against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition; action against money-laundering; and action against terrorism.[12] In its resolution 56/261 of 31 January 2002, the General Assembly invited Governments to consider carefully and use, as appropriate, the plans of action as guidance in their efforts to formulate legislation, policies and programmes in the field of crime prevention and criminal justice, for the purpose of implementing and following up on the commitments undertaken in the Vienna Declaration.

59. While implementation of the various plans of action by the Secretariat is contingent on the availability of resources, a number of elements contained in the plans of action are already embodied in the ongoing work of the Centre for International Crime Prevention. Since the conduct of the survey, global programmes have been established to assist States in combating trafficking in human beings and corruption, and a major ongoing project of the Centre involves the furnishing of assistance to States seeking to ratify the United Nations Convention against Transnational Organized Crime and its protocols. A new technical cooperation project to provide assistance to States seeking to ratify and implement international instruments against terrorism is also under preparation. The Commission may therefore wish to consider whether further efforts and resources are needed with respect to the implementation of the United Nations Declaration on Crime and Public Security.

Notes

[1] *Official Records of the Economic and Social Council, 2000, Supplement No. 10* (E/2000/30), paras. 37 and 49.

[2] The National Institute of Justice reviewed and analysed replies to the survey, noting that the limited number of replies to some questions did not, in its view, provide sufficient basis for drawing some of the conclusions envisaged in the original mandates. That analysis was submitted to the Centre for International Crime Prevention in March 1991.

[3] See the report of the Secretary-General on promoting the ratification of the United Nations Convention against Transnational Organized Crime and the protocols thereto (E/CN.15/2002/10).

[4] "Trafficking in persons" is defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex II, art. 3, subpara. (a)), which requires States Parties to criminalize such activity.

[5] Similar conclusions were reached by the group of experts on the illicit manufacturing of and trafficking in explosives by criminals and their use for criminal purposes. In its conclusions, the group of experts took

note of the desirability of restricting access to the chemical substances needed to make explosives, but also of the practical difficulties which arose out of the fact that many such chemical substances have common and innocuous applications (E/CN.15/2002/9/Add.1, paras. 56-58). Similar problems have arisen with respect to the regulation of chemicals and equipment that can be used to produce not only chemical or biological weapons but also pharmaceuticals and other legitimate items.

[6] Subsequently, in the United Nations Convention against Transnational Organized Crime the term "organized criminal group" was defined and the meaning of the words "transnational in nature" in the context of that convention was clarified (General Assembly resolution 55/25, annex I, art. 2, subpara. (a), and art. 3, para. 2).

[7] See, for example, the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex, art. 8) and United Nations Convention against Transnational Organized Crime (Assembly resolution 55/25, annex I, art. 16, para. 10).

[8] While respondents indicated that the possibility of capital punishment and "political offence" requirements were reasons why extradition could be refused, none actually cited any cases where they had in fact refused to extradite for either of these reasons during the survey period.

[9] The two major anti-terrorism instruments in effect at the time were the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (United Nations, *Treaty Series*, vol. 1035, No. 15410) and the International Convention against the Taking of Hostages (United Nations, *Treaty Series*, vol. 1316, No. 21931). States also indicated compliance with General Assembly resolutions 49/60 and 50/53, on measures to eliminate international terrorism. Some mentioned other legal instruments. Two other major anti-terrorism instruments, the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism (General Assembly resolution 54/109) did not exist at the time of the survey.

[10] See the report of the Secretary-General on the prevention of corrupt practices and illegal transfer of funds (A/56/403 and Add.1); the report of the Commission on its tenth session (*Official Records of the Economic and Social Council, 2001, Supplement No. 10* (E/2001/30/Rev.1), part one, paras. 17-24); and General Assembly resolutions 55/61, 55/188 and 56/260.

[11] *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: report prepared by the Secretariat* (United Nations publication, Sales No. E.00.IV.8), chap. I, resolution I.

[12] *Official Records of the Economic and Social Council, 2001, Supplement No. 10* (E/2001/30/Rev.1), part two, chap. I.